



## **APPENDIX A, DECEPTION PROVED BY PLAINTIFF'S WITNESSES.**

[Page numbers of the brief where Appendix A is referred to are shown in the list of Appendices appearing on the blue page immediately preceding the Appendices section.]

### **Extracts From Testimony of Witnesses Who Dealt in Or Used Beech-Nut Scrap Tobacco Or Beech-Nut Cigarettes In the Belief That These Articles Were Products of the Beech-Nut Packing Company.**

WILLIAM I. THOMAS, of Chicago, Illinois, a grocer (Record, Vol. I, page 469):

"Q. 3. Do you chew tobacco, Mr. Thomas?

"A. Yes.

"Q. 4. How long have you chewed tobacco?

"A. About twenty-thirty years.

"Q. 5. I show you a package of scrap tobacco, being a package of Beech-Nut scrap tobacco, Plaintiff's Exhibit No. 3 in this case. Have you ever chewed this brand of tobacco, and if so, for how long?

"A. Tobacco?

"Q. 6. Yes.

"A. I have chewed that off and on for the last five years.

"Q. 7. Prior to the spring of 1921 whose product did you think this was?

"A. I supposed it was the Beech-Nut people that put out stuff such as bacon and chili sauce and all that class of stuff.

"Q. 8. During the time that you have chewed this tobacco have you carried it around with you in your pockets, and taken it out when you wanted a chew?

"A. Yes.

"Q. 9. Do you now think that this tobacco is put out by the Beech-Nut Packing Company?

"A. Do I now?

"Q. 10. Yes.

"A. No. Not since I have been made wise to it last spring.

"Q. 11. And do you know who put you wise to it last spring?

"A. Some young fellow; I don't know who he was; come into the store there one day and he said he represented the Beech-Nut people, and I told him that we handled the Beech-Nut people's goods. He says, 'Do you handle Beech-Nut chewing tobacco?' I says, 'No, but I use it.' He says, 'Do you use it?' I says, 'Yes, I have been using it over'—I told him then, I believe, about four years. 'Do you think we put this out?' he says. I says, 'Yes, don't you?' He says, 'No, it is not our goods.' "

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A. V. BOBB, of Chicago, Illinois, proprietor of a meat market (Record, Vol. I, page 473):

"Q. 5. Do you chew tobacco, Mr. Bobb?

"A. Yes, sir.

"Q. 6. What brand have you chewed for the last four or five years, do you remember?

"A. Why, Beech-Nut was one of them, and Golden Twins, Climax.

"Q. 7. Is the Beech-Nut that you refer to the Beech-Nut scrap tobacco which I now show you, and which is in this case as Plaintiff's Exhibit No. 3; is that the Beech-Nut scrap?

"A. Yes, sir.

"Q. 8. How often, do you suppose, in the last five years you have purchased this Beech-Nut scrap tobacco; I mean, how many times a week?

"A. Now, I would not say whether it is four years or not—five years, but it is pretty close to it; about four years that I can remember; the year before I went into the army; around four years.

"Q. 9. I want an idea of how frequently you would purchase this tobacco?

"A. About once a week, maybe twice a week.

"Q. 10. And by whom did you believe that this product was put out?

"A. By the Beech-Nut Packing Company, Canajoharie, New York.

"Q. 11. And how long did you continue to believe that?

"A. Up until about—well, three months ago.

"Q. 12. And how did you find out that that was not true?

"A. By one of the salesmen, one of the Beech-Nut salesmen; he come into the store and I asked him about it; I asked him who puts up the Beech-Nut cigarettes, and he told me Lorillard's. I said, 'I thought you was putting it out,' and he said, no he didn't.

"Q. 13. I show you a package of cigarettes, being Plaintiff's Exhibit No. 1, Beech-Nut cigarettes. Have you seen these cigarettes before?

"A. Yes, sir.

"Q. 14. When, and how was your attention first directed to these cigarettes, do you remember?

"A. Why, yes, I was out at Jones' pharmacy, 63rd street, and standing at the counter there, and I says, 'Beech-Nut cigarettes,' and he says, 'Yes, I got some Beech-Nut cigarettes here, put out by the Beech-Nut Company.' I says, 'It isn't the same one that makes bacon?' He says, 'Yes.'

"Q. 15. And did he mention any other product that was made by these same people?

"A. Why, chewing tobacco; that was what I was after when I was in there.

"Q. 16. Do I understand he told you the chewing tobacco was made by the same people?

"A. By the Beech-Nut Packing Company.

"Q. 17. What made you think that this scrap tobacco was a product of the Beech-Nut Packing Company?

"A. It had the two beech-nuts on there, the same as the bacon, and it was in an oval shape, the same as the bacon does, and red letters and blue letters, just exactly the same as it is on the bacon. I never thought of looking at what was on the package.

"Q. 18. When did you first see the name of the manufacturer on this package, do you remember?

"A. About three months ago, when I had a package and looked at it, and it said 'Lorillard's' across the top.

"Q. 19. On the back of the scrap?

"A. Yes.

"Q. 20. This was after you were advised?

"A. After I was told it was not a Beech-Nut product. That is the reason I have been chewing it all the time, because I know the Beech-Nut bacon is good, and that the tobacco ought to be the same, and

I liked the taste of it very much, being in the business I am in.

"X-Q. 29. I understand you have been chewing this tobacco for five years?

"A. About four years; I would not say five.

"X-Q. 30. About four years.

"A. About four years.

"X-Q. 31. And you had never taken the trouble to look to see whose name was on there?

"A. Never looked at the name; just stuck it in my pocket and when I wanted a chew just took a handful out."

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CARL W. NEMETZ, of Milwaukee, Wisconsin, proprietor of a grocery store in which he sells tobacco products (Record, Vol. I, page 550):

"Q. 3. Do you sell tobacco products in your store?

"A. Yes, sir.

"Q. 4. I show you a package of scrap tobacco which is in this case as Plaintiff's Exhibit No. 3. Have you ever sold this tobacco in your store?

"A. Yes, sir.

"Q. 5. How long have you sold it there?

"A. Fourteen months.

"Q. 6. During the time you sold this tobacco from fourteen months ago up to very recently, whose product did you think it was?

"A. The Beech-Nut products, same as peanut butter and the likes of that.

"Q. 7. What made you think that, do you know?

"A. The name itself is the only reason.

"Q. 8. Do you now believe this is a product of the Beech-Nut people?

"A. Well, not since it has been explained to me, I don't.

"Q. 9. How long ago was it explained to you to the contrary?

"A. Oh, in the last month.

"Q. 10. Do you know who explained it to you—whom he represented?

"A. The Beech-Nut Products.

"Mr. Hinton: Direct examination closed.

*Cross-Examination by Mr. Cavanagh.*

"X-Q. 11. Do you handle the line of the Beech-Nut Packing Company's food products?

"A. Do you mean peanut butter?

"Q. 12. Yes.

"A. Yes.

"X-Q. 13. Do you handle the chewing gum?

"A. Yes.

"X-Q. 14. Candies?

"A. No Beech-Nut candies, no.

"X-Q. 22. Did you ever hear of P. Lorillard Company?

"A. Never until Stein Brothers told me, that was after he dropped in the same day your representative was in. In fact, twenty minutes afterwards, we discussed the same thing over with him.

"X-Q. 23. What did he tell you?

"A. He told me that was made by that firm.

"X-Q. 24. P. Lorillard Company?

"A. The one made Turkish cigarettes. And in fact, I never knew who made them until he told me.

"X-Q. 25. You never took the trouble to find who they were made by, did you?

"A. No, sir, never.

*Redirect Examination by Mr. Hinton.*

"R-D. Q. 45. Where do you get your Beech-Nut gum?

"A. Oh, from Stein Brothers and others.

"R-D. Q. 46. They are the people you get your Beech-Nut scrap tobacco from?

"A. Same people.

"R-D. Q. 47. Do you know whether the wholesale grocers, or some of them, are handling tobacco?

"A. Oh, yes; in fact, I think all of them do.

"R-D. Q. 48. Do you know whether they sell this Beech-Nut scrap?

"A. I don't know. The only reason I got Beech-Nut gum from Stein Brothers, at a time there it was pretty scarce to get and we used to gobble it up wherever we could get it from.

"R-D. Q. 49. They are tobacco jobbers?

"A. They are a tobacco and candy concern.

*Recross-Examination by Mr. Cavanagh.*

"R-X Q. 50. Their business isn't confined exclusively to tobacco?"

"A. No, they are the same as all other tobacco concerns in this town; every one of them carries gum and candy.

"R-X Q. 51. You mean the jobbers?

"A. Yes, tobacco jobbers; they carry it as side line."

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WILLIAM C. WEIGEL, of Milwaukee, Wisconsin, retail grocer who sells tobacco in his store (Record, Vol. I, page 560) :

"Q. 4. Do you sell tobacco products in your store?"

"A. Yes, sir.

"Q. 5. I show you a package of Beech-Nut scrap tobacco, being Plaintiff's Exhibit 3 in this case. Have you sold this tobacco in your store?"

"A. Yes, sir.

"Q. 6. How long have you sold it?"

"A. Oh, around two years, somewhere around there.

"Q. 7. Did the man come and sell you this tobacco, put it in your store?"

"A. Yes.

"Q. 8. I wish you would tell me, if you can remember, what was said on that occasion, when he came and put the tobacco in the store.

"A. I don't know whether I asked him directly, or whether he told me, but I was given to understand that this was a label that was only permitted on the very best products and was leased by the different companies that put out this product.

"Q. 9. Did you order tobacco from this man?"

"A. Yes, I bought it right from the man himself, I believe they carried it around with them, if I am not mistaken now.

"Q. 10. You paid him cash for it?"

"A. Yes, sir.

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"Q. 13. Now, whose product did you think this was, Mr. Weigel, or who did you think was responsible for the product?

"A. I naturally supposed that the Beech-Nut label was owned by some man or some company and then leased out to the people that put it out in a very high-class product.

"Q. 14. How long did you continue to believe that?

"A. Until about two or three or four weeks ago.

"Q. 15. And by whom were you then advised to the contrary, do you remember?

"A. By the Beech-Nut gum and dried beef people, Beech-Nut Packing Company, I guess it is.

"Q. 16. Do you sell Beech-Nut chewing gum in your store?

"A. Yes.

"Q. 17. Do you sell other Beech-Nut products?

"A. Dried beef."

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OSCAR JOSEPH, of Toledo, Ohio, proprietor, with Mike Saba, of a grocery and meat market in which they sell tobacco products (Record, Vol. I, page 617):

"Q. 4. Do you sell tobacco products in this store?

"A. Yes.

"Q. 5. I show you a package of Beech-Nut scrap tobacco, in this case, Plaintiff's Exhibit No. 3; have you sold this product in your store?

"A. A number of years.

"Q. 6. How long have you sold it?

"A. Between six and seven years.

"Q. 7. How much have you sold, approximately, —is it a good deal or little?

"A. Oh, quite a bit. I cannot remember how much, but we sell an awful bunch of it.

"Q. 8. During this six or seven years that you have been selling this product, whose product did you think it was?

"A. Of course, the Beech-Nut people.

"Q. 9. Do you know who makes that product?

"A. I did not really know that always,—I thought the Beech-Nut people.

"Q. 10. I was in here about fifteen minutes ago

and we have just come back to take this deposition. Did you in the meantime, ask a customer anything about this?

"A. Yes.

"Q. 11. And what did you ask him?

"A. I asked him, 'Who do you think makes the Beech-Nut tobacco?' He said, 'Of course, the Beech-Nut people.'

"Q. 12. Have you previously heard this matter discussed by the customer?

"A. Quite a few.

"Q. 13. What have they said?

"A. They all say—they talk about who is making the tobacco, they don't stop to think to read the name, they think it is the Beech-Nut people.

"Q. 14. Have you heard this discussed a little or a good deal?

"A. Quite often.

"Q. 15. During the past six or seven years?

"A. During the time I was doing business.

"Q. 16. Do you know the name of this customer whom you just asked about this?

"A. No, I can get you his name easy, he used to work for B. A. Berry; he is working for Wilson Company now.

"Q. 17. What is their line?

"A. Meat business.

"Q. 18. You know him personally?

"A. Yes.

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"X-Q. 30. You never bought any of the Beech-Nut Packing Company's goods, that is, their food products, or chewing gum, that was put up like a package of scrap tobacco?

"A. Not like the package—same name, everybody thinks it is the same firm.

"X-Q. 31. You never saw that name, Lorillard's?

"A. No."

MIKE SABA, of Toledo, Ohio, partner of Oscar Joseph in a grocery and meat market in which they sell tobacco products (Record, Vol. I, page 622):

"Q. 4. Do you handle tobacco products in this store, Mr. Saba?

"A. Yes.

"Q. 5. I show you a package of Beech-Nut scrap tobacco, in this case Plaintiff's Exhibit No. 3; have you sold this tobacco over the counter?

"A. Yes, lots of it.

"Q. 6. How long have you sold it over the counter?

"A. Six or seven years, I used to be on the corner over there, and I moved here.

"Q. 7. Now, during those six or seven years you sold this tobacco over the counter, whose product did you think it was?

"A. I thought it was the same people—Beech-Nut chewing gum, all the same company.

"Q. 8. Did you ever hear any of your customers talk about this tobacco, and who made it?

"A. I heard some time one fellow, he thought chewing gum and Beech-Nut tobacco all one kind, the same people make it, that is all I heard, all I know.

"Q. 9. I understand the others did not discuss the question with you, the other customers?

"A. Yes.

"Q. 10. Have you ever told your customers about who makes this tobacco?

"A. No, I did not tell them—I thought the same company made them. You asked me if I thought the Beech-Nut chewing gum and tobacco were made by the same people. I said I do not know, I think it is one people. You told me yesterday. I said I did not know that before."

"Direct examination closed.

*Cross-Examination by Mr. Cavanagh.*

"X-Q. 11. You never took the trouble to find out who made the tobacco, did you?

"A. No.

"X-Q. 12. You never read the package?

"A. No, I do not read very much, and I did not look.

"X-Q. 13. You did not pay any attention to it at all?

"A. No."

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JOHN JOZSA, of Toledo, Ohio, meat cutter and grocery clerk in Saba & Joseph's store in which tobacco products are sold (Record, Vol. I, page 625) :

"Q. 6. I show you a package of Beech-Nut scrap tobacco, which is in this case as Plaintiff's Exhibit No. 3. Have you in the course of your working in these various stores, including this one, sold this tobacco over the counter?

"A. Yes, sir, a lot of times.

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"Q. 15a. Now, during this time that you have been selling this scrap tobacco over the counter, whose product did you think it was?

"A. I thought it was the Beech-Nut people; I never looked at the name, but Beech-Nut, I heard of those products before.

"Q. 16. You have heard of Beech-Nut products before?

"A. Yes.

"Q. 17. Can you name some of these other Beech-Nut products?

"A. Oh, they have bacon, and dried beef, and hams, and chewing gum.

"Q. 18. Do you know now who makes this product?

"A. I do not know of any one else than the Beech-Nut people.

"Direct examination closed.

*Cross-Examination by Mr. Cavanagh.*

"X-Q. 19. What is the name of the concern that makes the Beech-Nut ham and bacon, what is their names, do you know?

"A. No, I cannot remember that, because I did not handle any of their products for quite a while.

"X-Q. 20. So you do not know really who makes the Beech-Nut bacon?

"A. No.

"X-Q. 21. You never took the trouble to read the printing on the package to see who made the Beech-Nut scrap, did you?

"A. No, generally when somebody wants tobacco in a hurry, I just grab it and give it to them.

"X-Q. 22. You never even took the trouble to look at it to see who made it?

"A. No.

"X-Q. 23. You see the name Lorillard on there, don't you.

"A. Yes."

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LLOYD SCHULTZ, of Toledo, Ohio, grocery clerk, employed by Saba & Joseph who sell tobacco products (Record, Vol. I, page 628):

"Q. 5. Do you sell tobacco products in that store?

"A. Yes.

"Q. 6. I show you a package of Beech-Nut scrap tobacco, which is in this case as Plaintiff's Exhibit No. 3; have you sold this tobacco in this store?

"A. Yes.

"Q. 7. For how long?

"A. Ever since I was here, that they handled it.

"Q. 8. How many years would that be approximately, or roughly?

"A. Six or seven years.

"Q. 9. Have you yourself personally handed it to customers over the counter?

"A. Yes.

"Q. 10. Have you handed it a good deal or little?

"A. Quite a bit.

"Q. 11. Now, whose product did you think it was all this time?

"A. I thought it was all the same thing, Beech-Nut, I never knew the difference. I never looked at it and never knew the difference but what it was Beech-Nut, all comes from the same place.

"Q. 12. Can you name any other Beech-Nut things?

"A. Yes, Beech-Nut bacon, Beech-Nut peanut butter, Beech-Nut beans, and quite a few things.

"Q. 13. And chewing gum?

"A. Yes, I always said tobacco, but I know better, it ain't now.

"Q. 14. Do you know now who made this product?

"A. I know you don't make it. Before I thought it was the same people that made the gum and tobacco.

"Q. 15. Who told you?

"A. The gentleman out there the salesman, Mr. Atkinson.

"Q. 16. When did he tell you he did not make this product?

"A. Yesterday.

"Q. 17. Had he told anybody else in the store at the same time he told you?

"A. Yes, the two bosses.

"Q. 18. Mr. Saba and Mr. Joseph?

"A. Yes.

"Q. 19. Were you in the store in approximately the fifteen-minute interval between the time I first came in this morning up to the time I came back, and did you hear Mr. Joseph ask a customer about this scrap tobacco?

"A. Yes.

"Q. 20. Who was this customer?

"A. A meat salesman.

"Q. 21. Do you know him?

"A. Yes.

"Q. 22. What is his name?

"A. We call Otke, Otkenheimer is his name.

"Q. 23. By whom is he employed?

"A. By Wilson & Co.

"Q. 24. What did Mr. Joseph ask him?

"Mr. Cavanagh: That is objected to; it is calling for hearsay.

"Mr. Hinton: This is offered in corroboration of Mr. Joseph's statement.

"Q. 25. Now, what did Mr. Joseph ask him, and what did he say?

"A. He was talking about tobacco and he thought the tobacco and gum all come from one company.

"Q. 26. Who said this?

"A. This meat salesman.

"Direct examination closed.

*Cross-Examination by Mr. Cavanagh.*

"X-Q. 27. What is the name of the concern that makes peanut butter?

"A. The Beech-Nut!

"X-Q. 28. Yes; what is the name of the concern?

"A. I never paid attention particularly to the name itself.

"X-Q. 29. So you don't know what concern made it?

"A. No.

"X-Q. 30. Same as to the bacon and gum?

"A. Yes.

"X-Q. 31. Did you ever hear of P. Lorillard Company? Tobacco people?

"A. I may have heard of them, but not paid any attention to it.

"X-Q. 41. You never took the trouble to read the wording on this package?

"A. No; never paid any attention to it.

"X-Q. 42. So you wouldn't know whether it was Smith, Jones or Brown's tobacco.

"A. I know it was the Beech-Nut people; that is all I know about it.

"X-Q. 43. You went by that name 'Beech-Nut'?

"A. Yes.

"X-Q. 44. That is all?

"A. Yes.

"X-Q. 45. You did not pay any attention to who manufactured it or where it came from, or anything?

"A. No."

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FRANK O'CONNELL, HENRY DIECKMAN, W. SHAFFER and H. A. NEFF, all in the grocery business at Toledo, Ohio, and ISABEL SHAFFER, employed in a drug store in the same city, in all of which stores tobacco is sold (Record, Vol. I, page 633):

These witnesses testified that in the five separate stores where they are employed, they stocked and sold Beech-Nut scrap tobacco for periods ranging from one to

two years, that they always believed that this tobacco was a product of the Beech-Nut Packing Company until advised in November, 1921, (the month during which they testified) by a representative of the Beech-Nut Packing Company that this tobacco was not a product of that company. They all said that they purchased the tobacco through a jobber in Toledo.

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ALEXANDER C. GARDNER, of Milford, Connecticut, proprietor of a grocery and confectionery store in which he sells tobacco (Record, Vol. I, page 309):

"Q. 4. Do you sell tobacco products in this store?

"A. Yes.

"Q. 5. I show you a package of cigarettes (Mr. Hinton shows witness package of Beech-Nut cigarettes) which is in this case as Plaintiff's Exhibit No. 1. Do you remember when you first stocked these cigarettes in this store?

"A. When I did?

"Q. 6. Yes.

"A. I don't remember exactly.

"Q. 7. Do you remember whether it was spring, summer, or fall?

"A. Well, let's see; I should say we got these in about the middle of winter, probably a little later.

"Q. 8. In the early spring?

"A. Yes, in the early spring.

"Q. 9. This year?

"A. Yes.

"Q. 10. When you first saw these cigarettes, by whom did you believe they were made?

"A. The Beech-Nut Packing Co.

"Q. 11. Why did you believe that?

"A. From the label, the Beech-Nut label.

"Q. 12. Do you refer to this oval device on the front of the package of cigarettes?

"A. Yes.

"Q. 13. Do you now believe they are made by the Beech-Nut Packing Company?

"A. No.

"Q. 14. When did you first find out they were not made by the Beech-Nut Packing Company, do you remember?

"A. There was a salesman, who informed me they were not a Beech-Nut product.

"Q. 15. Have you ever had any customers make any remarks to you over the counter about these cigarettes; if so, will you state the nature of the remarks?

"A. Why, they said if they were as good as the other Beech-Nut products they would be all right.

"Q. 16. Can you remember any other remarks that was made over the counter?

"A. Well, let's see, my mind is so full of other things—I was just trying to get these orders out.

"Q. 17. All right. Never mind that. Have you, since you knew who made these cigarettes, ever told customers they were a product of the Beech-Nut Packing Company?

"A. No, but I have had to inform them they were not a product of the Beech-Nut Packing Company.

"Q. 18. How often has this happened; I don't mean the exact number, but it has been frequent or not?

"A. Quite frequent, when they first came out.

"Q. 19. Yes. Have you ever seen a package of this scrap tobacco which is in this case, marked for identification as Defendant's Cross Exhibit No. 1 (Mr. Hinton shows witness package of Beech-Nut chewing tobacco), before I showed you one the other day?

"A. Not until you showed it to me.

"Q. 19a. I call your attention to the oval panel on the front of this package of scrap tobacco. Have you ever seen that device before?

"A. On all Beech-Nut products.

"Q. 20. Whose product would you take this to be?

"A. Beech-Nut Packing Company from the label.

"X-Q. 51. You don't find on that scrap tobacco a wide red oval band, with a single beech-nut, do you?

"A. No.

"X-Q. 55. That cigarette package hasn't that wide red band, with the name shown on it, has it?"

"A. No, but I didn't remember the Beech-Nut having a red band until you called my attention to it.

"X-Q. 56. You know the oval is very old in the business?"

"A. Yes, but an oval with a beech-nut is very different from an oval without a beech-nut."

"X-Q. 57. But I understood you to say you never knew of the Beech-Nut people to put out any tobacco."

"A. No."

"X-Q. 58. You have never sold any of their tobacco?"

"A. No, but they have put out so many new articles lately that it was no surprise to me to see a Beech-Nut cigarette. I classed it as a Beech-Nut product."

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SOLOMON S. KRAMER, of Hartford, Conn., proprietor of a delicatessen grocery and tobacco store. (Record, Vol. I, page 334):

"I am of legal age, and keep a delicatessen grocery and tobacco store at 84 Church Street, Hartford, Connecticut. I have been the proprietor of this store for five months. I have stocked and sold in this store a line of Beech-Nut products, such as jellies, jams, chewing gum and the like. I have also stocked and sold Beech-Nut chewing tobacco, similar to Plaintiff's Exhibit No. 3, and Beech-Nut cigarettes, similar to Plaintiff's Exhibit No. 1.

"I believed, until this morning, that the scrap tobacco and the cigarettes were a product of the Beech-Nut Packing Company, the same people that make the rest of the Beech-Nut products that I carry. Customers frequently come in and ask me for Beech-Nut, and I ask them whether they want the Beech-Nut chewing gum, Beech-Nut chewing tobacco, or Beech-Nut cigarettes. One customer came in here and asked me for some cigarettes, and I said, 'why not try Beech-Nut cigarettes, they ought to be good, because I carry the rest of the line.' "

NEWTON HARRISON, of Milford, Conn., proprietor of a dry goods store and editor of an electrical trade paper, (Record, Vol. I, page 317) :

"Q. 3. I show you a package of cigarettes (Mr. Hinton shows witness a package of Beech-Nut cigarettes) which is in this case, marked as Plaintiff's Exhibit No. 1, and ask you if you have ever seen these cigarettes before, and if so, when you first saw them?

"A. Some time in the spring in Mr. A. C. Gardner's store.

"Q. 4. Do you remember the month?

"A. Yes, April, and I purchased a package.

"Q. 5. Why did you buy these cigarettes when you first saw them?

"A. Because I saw the character of the name and believed it to be a Beech-Nut product. I thought it was good, and I thought I would try them.

"Q. 6. You thought it was good before you bought the cigarettes?

"A. I thought it was a Beech-Nut product, I thought the package was a good package, so I tried it, believing it was a Beech-Nut product.

"Q. 7. You subsequently bought other packages?

"A. Yes, other packages.

"Q. 8. When did you first buy these cigarettes; was that in the spring?

"A. Some time in the spring, I presume; I couldn't give you the exact date, but believe it was in Gardner's store, but I have seen them in other places since then, believing it was a Beech-Nut product.

"Q. 9. Do you now believe it is a Beech-Nut product?

"A. Not since I have heard from your representatives quite recently that the Beech-Nut people have nothing to do with it.

"Q. 10. Do you remember seeing myself and another man get out of an automobile in front of Mr. Gardner's store?

"A. Last week?

"Q. 11. Last week.

"A. Yes, and I said first, 'Why don't you bring out a good grade of near beer as long as you have so many other good products?' Then you spoke to

me and I discovered in a very short time that the Beech-Nut cigarette was not made by you, at which I was very much surprised.

"Q. 12. What was on this automobile we got out of?

"A. Beech-Nut stamp, the Beech-Nut trade-mark.

"Q. 13. And was it that—

"A. That was what attracted my attention.

"Q. 14. And then you said to me, 'Why don't you put out a near beer?'

"A. I was thinking of the other companies that had made near beer, and I thought in these prohibition days you might develop a nice branch of your business by use of the Beech-Nut trade-mark.

"Q. 15. Do you remember what I asked you exactly?

"A. You told me at the time, as nearly as I can recollect, that had I any particular brand in mind. I said, 'you recently came out with a Beech-Nut cigarette.' I think that was what I said as nearly as I can remember.

"Q. 16. Yes, that is my recollection. You have bought Beech-Nut products before, have you?

"A. Yes, jellies.

"Q. 17. And what has been your experience with them?

"A. They were excellent, always excellent, good quality, what we call a good brand. The name Beech-Nut seems to speak well for their ginger ale and jellies and such products as I have bought.

"Q. 18. I show you a package of scrap tobacco (Mr. Hinton shows witness package of Beech-Nut chewing tobacco), which is in this case as Defendant's Cross Exhibit No. 1. Have you ever seen that brand or panel on that before; I mean have you ever seen that label before?

"A. Yes.

"Q. 19. Where have you seen it?

"A. I have seen it in Bridgeport in a tobacco store.

"Q. 20. Have you ever seen this label on any other product?

"A. Why, that particular label—

"Q. 21. Or one like it?

"A. I have looked at that label and believed it to

be a label belonging to the Beech-Nut Company because the name Beech-Nut seems to be comprehensive. I naturally concluded it was a Beech-Nut product, that was my impression of it, also the cigarettes.

*Cross-Examination by Mr. Cavanagh.*

"X.Q. 22. How often did you purchase these Beech-Nut cigarettes?

"A. Well, we will say half a dozen times. I smoke various brands. I buy Murads, Pall Malls, Chesterfields, or Egyptian, and I have been buying Salisburys lately. I tried the Beech-Nut. I have had Beech-Nut cigarettes in the house; we gave them to friends and they smoked whatever we had there.

"X.Q. 23. Have you ever heard of P. Lorillard Co.?

"A. Yes.

"X.Q. 24. You know them to be large tobacco manufacturers?

"A. Yes.

"X.Q. 25. Do you notice the name P. Lorillard Co. now?

"A. Yes, I notice it now but would not have otherwise.

"X.Q. 26. Do you notice the name Beech-Nut on there?

"A. Yes.

"X.Q. 27. If you had taken the trouble to notice the name Lorillard—

"A. I would have noticed it was not a Beech-Nut product, but the Beech-Nut trade-mark is so conspicuous that I didn't draw any other conclusion but that it was a Beech-Nut product.

"X.Q. 28. That is, that word Beech-Nut?

"A. That is sufficient.

"X.Q. 29. And if you had taken the trouble to examine the package and noted the P. Lorillard Co. on it you would have known it was the tobacco company's product and not the Beech-Nut Company's?

"A. Yes, but the Beech-Nut is very conspicuous and the Lorillard very inconspicuous.

"X.Q. 30. On this scrap tobacco (Mr. Cavanagh

shows witness package of Beech-Nut chewing tobacco), can you find the name Lorillard on that?

"A. Yes, if you know where to look for it.

"X-Q. 31. You have never seen any Beech-Nut products with any of those red radiating lines on it like that, have you?

"A. To my recollection they have a simple oval trade-mark, that is as far as I saw the goods, that is the way I remember their product. It just has a red oval with Beech-Nut in it.

"X-Q. 32. Do you know that in trade-marks it is very customary to use an oval on packages?

"A. Yes, it seems to be convenient for them.

"X-Q. 33. Did you ever hear of the Beech-Nut Packing Company putting out any tobacco product whatsoever?

"A. Not since I have been informed, I realized they haven't put out any tobacco products. It was a surprise to me to know it wasn't their product.

"X-Q. 34. You never made any particular inquiries to find out whether or not it was their product?

"A. I took it as a matter of course that it was their product.

"X-Q. 35. Because of the name Beech-Nut?

"A. Yes, because of the name Beech-Nut."

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JOSEPH DE RAGO, of Hartford, Connecticut, proprietor of a general store in which he sells tobacco (Record, Vol. I, page 329):

"Q. 2. Do you handle tobacco in this store, Mr. De Rago?

"A. Yes.

"Q. 3. I show you a package of cigarettes (Mr. Hinton shows witness package of Beech-Nut cigarettes) which is in this case as Beech-Nut Exhibit No. 1, being a package of Beech-Nut cigarettes. Have you sold these cigarettes in this store?

"A. Yes.

"Q. 4. How long, about?

"A. Since they came out, when they come was in the spring.

"Q. 5. Yes. Mr. De Rago, who did you believe made these cigarettes?

"A. Always believe Beech-Nut make it; also call same name, that's Beech-Nut.

"Q. 7. Yes. Is that the people who make the gum?

"A. Yes, that's it.

"Q. 8. Do you sell the Beech-Nut gum?

"A. Yes.

"Q. 9. Mr. De Rago, have you sold Beech-Nut scrap tobacco in this store?

"A. Yes, I have been selling for six years here.

"Q. 10. Who did you believe made the Beech-Nut scrap tobacco?

"A. I believe just the same, Beech-Nut make Beech-Nut scrap tobacco.

"Q. 11. Is this the scrap tobacco I show you? (Mr. Hinton shows witness package of Beech-Nut chewing tobacco.)

"A. Yes.

"Mr. Hinton: The package shown the witness is produced and offered in this case as Beech-Nut Exhibit No. 3, Beech-Nut scrap tobacco.

"Q. 12. Mr. De Rago, did you ever tell people in this store that this scrap tobacco was made by the Beech-Nut people?

"A. They ask me who makes; I say I think Beech-Nut people make the same thing, they say that is right, Beech-Nut makes every thing, that's all.

"Q. 13. Now, when, if at all, when did you first find out; when was the first time you found out?

"A. Today.

"Q. 14. That the Beech-Nut people did not make this product?

"A. Today.

"Mr. Hinton: You may cross-examine.

"Direct examination closed.

*Cross-Examination by Mr. Cavanagh.*

"X-Q. 24. During the last six years about how often have you sold this scrap tobacco? (Mr. Cavanagh indicates a package of Beech-Nut chewing tobacco.)

"A. I can't tell you that, about every week, when I run short, I buy every week.

*Redirect Examination by Mr. Hinton.*

"R-D. Q. 38. Mr. De Rago, can you tell me why it was you supposed that these things were made by the Beech-Nut people?

"A. I thought it was, it looked the same thing (witness points to oval brand on two packages), but I never looked at the name, as I told you, because I can't read and never bother with them. People say Beech-Nut makes, and I say I think so, I don't know. Beech-Nut always make them, because the same name."

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JOHN MEAD (Record, Vol. I, page 342):

"My name is John Mead; I am of legal age, and am employed as a clerk in Preston's market on Asylum Street, Hartford, Connecticut. I have seen the Beech-Nut scrap tobacco on display and have bought a few packages of it and always thought it was a Beech-Nut product, made by the same people that makes the gum and other Beech-Nut products. I have seen the Beech-Nut cigarettes, similar to Plaintiff's Exhibit No. 1, advertised and on display in Hartford, Connecticut, since the spring of 1921 and thought that these were made by the same people who made the Beech-Nut gum and other food products. I was first informed that neither the Beech-Nut scrap tobacco or the Beech-Nut cigarettes were a product of the Beech-Nut Packing Company, on August 30th, 1921, by Mr. Ray, a representative of the Beech-Nut Packing Company."

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GEORGE F. MOULTON, retail druggist, South Norwalk, Conn., who sells tobacco products (Record, Vol. I, page 376):

"Q. 3. I show you a package of Beech-Nut cigarettes, which is in this case as Plaintiff's Exhibit No. 1. Have you handled these here?"

"A. Yes.

"Q. 4. How long have you handled them?

"A. Several months.

"Q. 5. Whose product did you think these cigarettes were prior to yesterday?

"A. Beech-Nut people, of course.

"Q. 6. Do you now think they are a Beech-Nut product?

"A. From what you told me, no.

"Q. 7. When did I tell you that they were not?

"A. Yesterday.

"Q. 8. Have you yourself sold these cigarettes over the counter?

"A. I have, yes.

"Q. 9. I show you a package of scrap tobacco, which is in this case as Plaintiff's Exhibit No. 3. Whose product would you take that to be?

"A. Beech-Nut, of course.

"Q. 10. What do you mean by Beech-Nut?

"A. Made by the Beech-Nut Packing Company.

"Q. 11. Why would you take that to be a Beech-Nut product?

"A. From the name and label on it and the trademark.

"Q. 12. Have you ever seen this scrap tobacco before today?

"A. No.

"Q. 13. Have you ever seen it displayed around anywhere in this town or elsewhere?

"A. No, I have not."

*Cross-Examination by Mr. Cavanagh.*

"X-Q. 14. From whom do you buy these Beech-Nut cigarettes?

"A. Jobers.

"X-Q. 15. Ever hear of the P. Lorillard Company?

"A. Yes, tobacconists.

"X-Q. 16. You notice P. Lorillard Company's name on the package?

"A. I do now, yes.

"X-Q. 17. You notice the name Lorillard on the scrap tobacco?

"A. I do now, yes.

"X-Q. 18. So when you first saw that package, or when you handled them first, you didn't pay any attention to the name, just glanced at the package?"

"A. Well, Beech-Nut was the prominent name."

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TRACY N. COLLINS, proprietor of a grocery and restaurant at Noroton, Conn., in which he sells tobacco goods (Record, Vol. I, page 378) :

"My name is Tracy N. Collins; I am of legal age, and the proprietor of a grocery and general store, and restaurant, located in Noroton, Conn. I have stocked and sold Beech-Nut scrap tobacco similar to Plaintiff's Exhibit No. 3 for about two years, and I have stocked and sold Beech-Nut cigarettes similar to Plaintiff's Exhibit No. 1 since these cigarettes came out in this territory, which was in the spring of 1921. I always believed that both the scrap tobacco and the cigarettes were made by the Beech-Nut Packing Company, the same people who make the chewing gum and other food products, until I was told by Mr. Hinton, on September 7, 1921, that the Beech-Nut Packing Company did not make either of these two products."

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JOHN E. WATSON, druggist, of Chicago, Ill., who sells tobacco products (Record, Vol. I, page 411) :

"Q. 9. I show you a package of scrap tobacco, which is in this case as Plaintiff's Exhibit No. 3, being a package of Beech-Nut scrap tobacco. Have you ever sold this product over the counter?"

"A. Yes, sir.

"Q. 10. How long have you sold it over the counter?"

"A. I would be right in saying five years and perhaps more.

"Q. 11. I wish you would tell me whether you have sold very little of it or a good deal.

"A. I have had in most places good business on it.

"Q. 12. Do you now know who makes this Beech-Nut scrap tobacco?"

"A. No.

"Q. 13. Prior to a few weeks ago, who did you believe made this Beech-Nut scrap tobacco?

"A. I presumed it was put out by the Beech-Nut Company, like the chewing gum.

"Q. 14. Have you ever had occasion to talk about this scrap tobacco to your customers and, if so, what would you tell them about it?

"A. I would tell them it was put out by same company as Beech-Nut gum was.

"Q. 15. Was this true for the whole period of the five years?

"A. Yes, sir.

"Q. 16. Do you now believe that this scrap tobacco is made by Beech-Nut Packing Company—now this minute?

"A. Well, I really don't know, because I never looked up on it. I always sold it.

"Q. 17. Do you now believe that this is a Beech-Nut product or not? What do you believe about it now?

"A. I suppose that it is.

.....

"Q. 24. Did a representative of the Beech-Nut Packing Company recently come to see you, do you remember?

"A. Yes.

"Q. 25. Did he tell you whether or not the Beech-Nut people made this tobacco?

"A. I don't remember who he said made it. The best I remember he said cigarettes and tobacco weren't put up by the same people.

"Q. 26. Were or were not?

"A. Were not.

"Q. 27. How long ago was that?

"A. Perhaps three weeks ago.

"Q. 28. Now, I direct your attention, Mr. Watson, to Beech-Nut cigarettes in this case as Plaintiff's Exhibit No. 1, and show you a package thereof. Whose product did you think these were?

"A. I presumed they were put up by same people as Beech-Nut scrap tobacco and gum.

"Q. 29. How long have you handled these cigarettes?

"A. A short while.

"Q. 30. Have you yourself sold them over the counter?

"A. I have sold a few.

"Q. 31. Who makes the cigarettes, do you know?

"A. I cannot say that I do.

"Direct examination closed.

*Cross-Examination by Mr. Cavanagh.*

"X-Q. 1. Do you smoke, Mr. Watson?

"A. Yes, sir.

"X-Q. 2. What do you smoke?

"A. Cigars and cigarettes, both.

"X-Q. 3. Do you chew?

"A. No.

"X-Q. 4. Did you ever buy any of that Beech-Nut scrap tobacco?

"A. No.

"X-Q. 5. You have bought it from wholesaler for drug company?

"A. Yes.

"X-Q. 6. Did you ever buy any Beech-Nut Packing Company products?

"A. I bought scrap tobacco and the gum.

"X-Q. 7. I am asking you did you ever buy any products of the Beech-Nut Packing Company?

"A. I want to get you right. Is Beech-Nut scrap tobacco the Beech-Nut Packing Company products?

"Mr. Cavanagh: Mr. Watson, I cannot answer that question for you, but I will try to clarify the situation. You have bought Beech-Nut chewing gum. From whom did you buy that?

"A. I bought Beech-Nut gum from several stores.

"X-Q. 8. Did you buy from Beech-Nut Packing Company man?

"A. I cannot say that I did. Usually buy from jobbers."

JOSEPH S. AISENBERG, of Worcester, Mass., wholesale grocer who deals in tobacco goods (Record, Vol. I, page 148):

"Q. 2. Does your firm handle tobacco products for its grocery trade?

"A. Yes.

"Q. 3. What is the name of your firm?

"A. United Wholesale Grocery Company.

"Q. 4. What is your position with that firm?

"A. I am general manager and buyer.

"Q. 5. I show you a package of cigarettes which is in evidence in this case as 'Beech-Nut Exhibit 1.' Have you ever seen these cigarettes before?

"A. Yes.

"Q. 6. State, if you can remember, about when you first saw these cigarettes?

"A. Well, that I don't know.

"Q. 7. Well, approximately?

"A. I couldn't tell you. I remember seeing the ads in the paper when they first came out. Exactly when I don't remember; I don't know whether it is this year or less than a year ago.

"Q. 8. When you first saw these cigarettes, or ads to which you refer, by whom did you think this product was made?

"A. Well, my first impression was that they were made by the Beech-Nut Packing Company.

"Q. 9. And do you know what led you to that belief?

"A. Well, the fact was that the Beech-Nut people, as we always knew them, were in the jams, jellies and meat business, and then they went into the candy business. I thought they just added another line to their products and had gone into the tobacco business.

"Q. 10. Can you tell me anything further about the impression you received when you first saw these Beech-Nut cigarettes, with respect to the Beech-Nut people or the rest of their line or anything of that character?

"A. Well, knowing the Beech-Nut people as I knew them, and the quality they manufacture, from the line we handle in our own business, I was very much disappointed with the appearance of the pack-

age and the price of the cigarettes. I did not think that the quality and the appearance were in line with the general character of the quality of their products.

"Q. 11. Do you now believe that these cigarettes were made by the Beech-Nut Packing Company?

"A. Well, I did believe that until I found out otherwise upon making inquiry.

"Q. 12. And do you remember, Mr. Aisenberg, how long after you first saw the ads or the cigarettes it was that you learnt upon inquiry that these cigarettes were not made by the Beech-Nut Packing Company?

"A. Why, I believe it was over a month or so later that I happened to be in one of the tobacco stores and I asked various things, and amongst them I asked whether the Beech-Nut cigarette was being made, or being put out, by the Beech-Nut Packing Company and I was informed to the contrary.

"X-Q. 20. How many people are employed by your concern?

"A. You mean salesmen?

"X-Q. 21. Entirely.

"A. I believe we employ about thirty.

"X-Q. 22. Where is your business located?

"A. 133-135 Grafton Street.

"X-Q. 23. You employ about thirty people all told?

"A. Yes.

"X-Q. 24. In what region do you sell your products?

"A. We ship as far as Maine; we ship New Hampshire, Rhode Island, Connecticut—of course, Massachusetts; we also make some shipments into New York State, and occasionally into Pennsylvania.

"X-Q. 25. Do you do a general grocery business?

"A. Yes.

"X-Q. 30. Do you handle any Beech-Nut tobacco?

"A. We have, off and on. We handle the cigarette.

"X-Q. 31. You do handle Beech-Nut cigarettes?

"A. Occasionally we have had orders, and filled our orders.

"R-X Q. 86. You know it is customary to put that wrapper on the cigarettes?

"A. Yes, but I believe I appreciate, and you do, that it is hard to find the name through tissue paper.

"R-X Q. 87. And the same way with an Arrow collar—you would see this name on it?

"A. Yes. I just want to say this word for a matter of explanation. I don't consider myself an expert as a tobacco buyer because tobacco is one of our side lines. Our large and chief line is food products, groceries, and we handle tobacco because all grocers handle it and we like to give our grocers a complete line. I don't want to appear in the light of being an expert or big tobacco man. I am not. I want to say we buy from Worcester Tobacco Company, but also Henry Freeman in town; in case one is short, we naturally go to the other. We buy from both of these men and our profit on our merchandise is always as large as if we bought direct.

*Re-Redirect Examination by Mr. Hinton.*

"R-D. Q. 88. Mr. Aisenberg, whom do you sell tobacco products to when you sell them?

"A. Mostly grocery stores.

*Re-Recross-Examination by Mr. Cavanagh.*

"R-X Q. 89. Do you sell to tobacco stores, too?

"A. Why, our percentage of sales to tobacco stores is very, very small.

"R-X Q. 90. But you do sell to them?

"A. Yes, we do, but we have about two thousand accounts on our books and I don't believe a hundred of them would be and have been of the tobacco stores on our books, but they buy very little tobacco unless they should happen to run short on their regular jobber."

BRYAN O. FOSTER, clerk at Pembroke, Kentucky, in a grocery where tobacco products are sold (Record, Vol. I, page 682):

"Q. 6. Have you handled Beech-Nut Packing Company's products?

"A. Yes.

"Q. 7. Will you name some of them you have handled please?

"A. Handled Beech-Nut pork and beans, and peanut butter and chewing gum and mints.

"Q. 8. Are you familiar with the Beech-Nut Packing Company's label?

"A. Yes, sir, I think so.

"Q. 9. I show you a package of Beech-Nut scrap tobacco, now in evidence in this case as Plaintiff's Exhibit No. 3—did you ever see a package of this tobacco before?

"(Witness examines the package handed him by attorney.)

"A. Yes, sir.

"Q. 10. When?

"A. The first time I remember was along in the summer.

"Q. 11. When you saw it, who did you think was putting it out?

"A. I thought the Beech-Nut Packing Company was putting it out.

"Q. 12. Why did you think that?

"A. Well, from the name and label I just supposed they were putting it out.

"Q. 13. I show you a package of cigarettes, now in evidence in this case as Plaintiff's Exhibit No. 1; have you ever seen a package of those cigarettes before?

"A. Yes, sir.

"Q. 14. When?

"A. Well, the first time that I remember for sure was along in the fall.

"Q. 15. When you saw it, who did you think was putting them out?

"A. I thought the Beech-Nut people—Beech-Nut Packing Company was putting them out.

"Q. 16. Why did you think that?

"A. From the name of the cigarettes and label on them.

"Q. 17. How long did you think this tobacco and cigarettes were put out by the Beech-Nut Packing Company?"

"A. Until the 21st day of November—I found out it was a different concern."

"Q. 18. How did you happen to learn differently then?"

"A. Well, the Beech-Nut man—that is the tobacco man came in, and it happened that the Beech-Nut Packing Company's man was here the same day, and I asked Mr. Roach how come two men representing the Beech-Nut people were here the same day, and so he told me."

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WILLIAM H. SAGE, of Wheaton, Ill., druggist employed in Chicago in a drug store where tobacco goods are sold (Record, Vol. I, page 417):

"Q. 8. Well, in the last two years that you have been selling tobacco and cigarettes, have you been personally handing these goods out to the customer?"

"A. Yes, sir.

"Q. 9. Have you in the past two years sold over the counter Beech-Nut chewing tobacco, similar to the package I now show you, Plaintiff's Exhibit No. 3?

"A. Yes, sir.

"Q. 10. Will you please state by whom you believed this chewing tobacco to be put out, up to the past few weeks?

"A. I always supposed it was put out by the same people who manufactured chewing gum called Beech-Nut chewing gum.

"Q. 11. Do you now believe that this product is manufactured by the same people who manufacture the chewing gum?

"A. I understand it is manufactured by Lorillard Company.

"Q. 12. How and when did you obtain the information that this product was manufactured by the Lorillard Company?

"A. In a conversation with a customer some two or three weeks ago my attention was called to the Beech-Nut cigarettes now put out by Lorillard Com-

pany. In that conversation I was informed that they were not put out by Beech-Nut people. Up to that time I was under the belief that all three of the products, the chewing gum, chewing tobacco and Beech-Nut cigarettes were all manufactured by the same people.

"Q. 13. Do you remember ever having discussed the Beech-Nut scrap tobacco with your customers, and if so, do you remember what you told them about its origin?

"A. I recall in conversation talking about cigarettes. Some customer stated that the cigarettes were a superior quality of cigarettes, and also that the chewing tobacco was. I made the statement that all of the products manufactured by the Beech-Nut Packing Company were of superior quality, stating at that time that their chewing gum with us had the largest sale of any chewing gum on the market.

"Q. 14. Do you recollect whether or not at previous times you have made similar statements during the two years that you were handling the scrap tobacco?

"A. Yes, I suppose it's been something the same. I probably made the statement many times. I don't know how many times."

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CHARLES P. COOK, of Paris, Kentucky, a grocer who sells tobacco products (Record, Vol. I, page 695) :

"Q. 2. Under what name, and where, do you do business?

"A. Charles P. Cook & Company, 726 Main Street, Paris, Kentucky.

"Q. 3. How long have you been in the grocery business?

"A. Over twenty-two years.

"Q. 4. Have you handled Beech-Nut Packing Company products?

"A. Yes, sir.

"Q. 5. How long?

"A. Almost ever since I have been in business.

"Q. 6. Please name some of them that you have handled.

"A. Chewing gum, mints, breakfast bacon, peanut butter, jellies, macaroni, spaghetti.

"Q. 7. What have you found in your experience, to be the quality of Beech-Nut Packing Company's line of products?

"A. It is high class.

"Q. 8. How have they sold with you?

"A. Good.

"Q. 9. What does the Beech-Nut label on a line of goods mean to you?

"A. It means quality.

"Q. 10. Do you sell tobacco and cigars in your grocery store?

"A. Yes, sir.

"Q. 11. How long have you done this?

"A. Ever since I have been in business.

"Q. 12. Is it a common thing for grocery stores to sell tobacco?

"A. With all of them in this section of the country.

"Q. 13. Are you selling Beech-Nut chewing gum in your store at present?

"A. Yes, sir.

"Q. 14. Where do you expose this gum for sale?

"A. In a case on top of the cigar case.

"Q. 15. Are any other of the Beech-Nut products displayed for sale near your tobacco?

"A. Well, I have got some on the shelf behind it, and in front of it, too.

"Q. 16. How close is that to the tobacco?

"A. Well, I would say that the jellies are right directly behind it and peanut butter and breakfast bacon are right opposite the case, only a few feet.

"Q. 17. I show you a package of Beech-Nut scrap tobacco, in evidence in this case as Plaintiff's Exhibit No. 3. Have you ever seen packages of this tobacco before?

"A. Yes, sir.

"Q. 18. Do you handle it?

"A. Yes, sir.

"Q. 19. When did you first know of it?

"A. Why, four or five years ago; first time I ever saw it a salesman came into my place of business, and stated that he was selling Beech-Nut tobacco.

"Q. 20. What occurred between you and the tobacco salesman at that time?

"A. I told him that I didn't know that the Beech-Nut Packing Company put up tobacco, and he stated that this was a new product, or one of their new products.

"Q. 21. What was the effect on you of this conversation?

"A. Well, I am not certain that I bought Beech-Nut tobacco at that time, wouldn't say positive, but I think I did. We were perfectly willing to handle it, all right enough, because we had been handling other Beech-Nut stuff, and thought the quality would be like all other Beech-Nut stuff.

"Q. 22. What makes your memory of your conversation with the Beech-Nut tobacco salesman on the day you have told about, so clear in your mind?

"A. Well, Mr. Mattox, who sells Beech-Nut stuff, was in the store at the time, and I told him that I didn't know that the Beech-Nut Packing Company put out tobacco, and he stated himself that he didn't know it either, that it wasn't on his list, he would find out about it.

"Q. 23. Would you take this package for a Beech-Nut product?

"A. Well, I can't say that. I will say that the Beech-Nut name is what appealed to me. I never paid so much attention to the package as I did to the name that was on it. That's what impressed me."

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ARTHUR E. FECHTER, proprietor of a drug store in Chicago, in which he sells tobacco products (Record, Vol. I, page 437):

"Q. 2. I show you a package of Beech-Nut scrap tobacco, in this case as Plaintiff's Exhibit No. 3. Have you ever sold this product over the counter in your store, Mr. Fechter?

"A. I have.

"Q. 3. How long have you sold it over the counter?

"A. About two years.

"Q. 4. Up to within very recently, whose product did you believe it was?

"A. Beech-Nut Company.

"Q. 5. Do you now believe that it is a product of the Beech-Nut Company?

"A. I know it is not.

"Q. 6. How did you get your information that it was not?

"A. One of the salesmen told me it wasn't.

"Q. 7. One of whose salesmen?

"A. I don't know who they are. I don't give salesmen much attention. I am bothered with them all day long. Don't know who he was.

"Q. 8. Do you remember, Mr. Fechter, whether he stated to you at the time what company he represented?

"A. No.

"Q. 9. Do you know now who makes this scrap tobacco?

"A. I do not.

"X-Q. 22. If you went into a store and wanted a tobacco product, such as this scrap tobacco, or a package of cigarettes, could you be fooled into taking chewing gum in place of scrap tobacco or cigarettes?

"A. No, I shouldn't think so.

"X-Q. 23. Entirely different class of goods?

"A. I wouldn't take gum for tobacco or cigarettes.

"X-Q. 24. And if a man wanted to buy some cigarettes and asked you for cigarettes or scrap tobacco, you wouldn't hand him gum?

"A. What kind of a darn fool question is that? You don't take me for a damn fool, do you? I won't listen to that stuff."

"(Witness got up and walked out of room and left office. Said he wouldn't listen to such damn fool stuff.)

"Mr. Hinton: If Mr. Cavanagh desires to continue the cross-examination, an immediate subpoena will be served upon the witness, who was voluntarily attending, and he will be produced for further examination.

"Mr. Cavanagh: That is not necessary.

"Deposition closed.

"Signature waived."

JEFFERSON D. HAYDEN, of Columbia, S. C., a grocer who sells tobacco products (Record, Vol. I, page 754):

"Q. 8. Please name some of the Beech-Nut Packing Company's products that you have handled.

"A. Beech-Nut gum, pork and beans, Beech-Nut peanut butter. Those are three that I have handled.

"Q. 9. How have they sold for you?

"A. One hundred per cent.

"Q. 10. What does Beech-Nut Company's label mean to you?

"A. It means a great deal—that is, in the line of groceries—quality.

"Q. 11. Quality?

"A. Yes, sir.

"Q. 12. Do you keep a general line of groceries?

"A. I do.

"Q. 13. Do you sell tobacco and cigarettes along with your groceries?

"A. Yes, sir.

"Q. 14. Is that common in your part of the country, to sell tobacco and cigarettes alongside of groceries in the same store?

"A. It is.

"Q. 15. I show you a package of Beech-Nut scrap tobacco, now in evidence in this case as Plaintiff's Exhibit No. 3, and a package of Beech-Nut cigarettes, already in evidence in this case as Plaintiff's Exhibit No. 1. Have you this tobacco and these cigarettes on your shelves for sale?

"A. Yes, sir.

"Q. 16. Do you display them in the display section of your store along with the other tobacco and cigarettes that you handle?

"A. I do.

"Q. 17. Whereabouts in your store with reference to the tobacco and cigarette section do you display for sale the Beech-Nut chewing gum?

"A. In the same section, on the bottom shelf, just below the tobacco.

"Q. 23. When was the first time you ever saw a package of this Beech-Nut tobacco—scrap tobacco?

"A. October 18, 1921, when a salesman came in to see me and sold me, and sold me.

"Q. 24. When you first saw the package who did you think was putting it out?

"A. The Beech-Nut people.

"Q. 25. What Beech-Nut people?

"A. The same people who were putting out the other Beech-Nut products.

"Q. 26. Why did you think that?

"A. From the appearance of the package, all looked the same, the label and the name Beech-Nut.

.....

"Q. 47. Did you buy that dozen packages of tobacco—of Beech-Nut scrap, believing that you were dealing with the same people that were putting out Beech-Nut butter?

"A. I did.

"Q. 48. Did you sell any of it to your customers, thinking it was put up by the same company that put up Beech-Nut butter?

"A. I did.

"Q. 49. Can you tell us what you said to some of them?

"A. I says, I have a new Beech-Nut product on the market, and it should be a good seller, that it was Beech-Nut, and it ought to be all right. Beech-Nut products were good sellers, and it should be a good product if it were as good as the others were.

.....

"X-Q. 85. When he came in here Larson did not tell you the tobacco was made by the Beech-Nut Packing Company, did he?

"A. He did not tell me who made it.

"X-Q. 86. But he gave you a receipt of P. Lorillard Company?

"A. That is the receipt he gave me.

"X-Q. 87. That receipt has no connection whatever with the Beech-Nut Packing Company?

"A. It has not, so far as the name on it.

"X-Q. 88. As an ordinary careful man, familiar with business, as you are, when that receipt was given to you, if you looked at it you would have seen P. Lorillard, and known it was a P. Lorillard receipt, would you not?

"A. If I had observed it carefully.

"X-Q. 89. If you had looked at it?

"A. I did not look at it. If I had I would not have known whether it was the manufacturer or the jobber.

"X-Q. 90. But you would have known that it was a receipt of P. Lorillard Company?

"A. I would have known that it was headed P. Lorillard Company, but I would not know him from anybody else. He did not explain whether he was the manufacturer or jobber when I bought this."

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#### *Boston Business Men.*

The eight witnesses whose testimony is quoted below are business men, brokers, mill representatives and grain merchants doing business on the floor of the Boston Chamber of Commerce. This testimony relates to the impression created by the appearance of Beech-Nut cigarettes upon sale in Boston. Robert Skene, Jr., is the representative in Boston of Arkell & Smiths Company, manufacturers of paper and cotton sacks for flour and feed, of which company Mr. Arkell is president. Mr. Arkell is also president of the Beech-Nut Packing Company. Mr. Skene's business friends, knowing these facts, referred to him for information about the Beech-Nut cigarette, and their comments quoted below show accurately the impression made upon men of their class by the use of this word Beech-Nut upon cigarettes.

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ROBERT SKENE, JR., representative at Boston, Mass., of Arkell & Smiths Company, of Canajoharie, N. Y. (Record, Vol. I, page 38):

"Q. 4. Are you known among your friends in Boston as being in some way connected or familiar with the Beech-Nut Packing Company?

"A. Everybody here, around the Chamber especially, persistently associates me with the Beech-Nut Company. They seem to think that I have something to do with it in some way, all the time.

"Q. 5. My 'Chamber' you mean the Chamber of Commerce?

"A. Yes, Chamber of Commerce.

"Q. 6. I show you a package of Beech-Nut cigarettes, Plaintiff's Exhibit No. 1 in this case. Have you ever seen these cigarettes before, and if so, when and where did you first see them?

"A. Yes, I have seen these. I first saw them at the cigarette-stand here in the Chamber of Commerce.

"Q. 7. When was that?

"A. In the spring of this year.

"Q. 8. About what time?

"A. The early part of this year.

"Q. 9. Were they on sale at that stand when you first saw them?

"A. Yes, sir.

"Q. 10. Will you please state whether you had heard anything about these cigarettes prior to the time that you actually saw them offered for sale?

"A. On the floor of the Chamber quite a number of people came to me and said: 'I see that your people are getting out a new cigarette, the Beech-Nut cigarette.' And so many persisted in this, making this inquiry of me, 'Are you getting out a new Beech-Nut cigarette,' that I inquired about where they could be found and I went down to the cigar stand and got a package.

"Q. 11. When you first saw these cigarettes, by whom did you think they were made?

"A. I thought it was a Beech-Nut Packing Company product.

"Q. 12. What made you think that?

"A. Well, the Beech-Nut hyphenated, just the same as the Beech-Nut Packing Company do, and the form of the label, and the cluster under the 'Beech-Nut' and the whole color scheme, the whole general form of the label.

"Q. 13. Now, you stated you went down and bought a package of these cigarettes. Then what did you do?

"A. Of course, I examined it and found that the name Lorillard Company was on them.

"Q. 14. And what did you then conclude, Mr. Skene?

"A. So then I was not sure whether it was a Beech-Nut product or not, but I thought perhaps Lorillard might be putting it out for the Beech-Nut people, and I wrote down to Canajoharie to inquire before I gave any positive information to my friends about it one way or the other.

"Q. 15. •And then what happened?

"A. The Beech-Nut people wrote me that it was not their product, and that they had nothing to do with it. And from that time I informed all friends who made inquiries of me, and who had spoken to me about it, that it was not our product at all.

"Q. 16. You said that several of your friends had spoken to you about these cigarettes. Will you state, if you remember, and as carefully as you can, exactly what these people said to you?

"A. Well, there were so many different forms that it would be hard, but generally it was 'I see that the Beech-Nut people are getting out a cigarette,' or, 'I see that you have a new brand of cigarettes,' or, 'Why don't you send us some of your Beech-Nut cigarettes.'

"Q. 17. Can you, Mr. Skene, give me the names of any of your friends in the Boston Chamber of Commerce, whom you can remember, who definitely made remarks of that character to you when the cigarettes came out?

"A. Well, Fred Godfrey—

"Q. 18. Will you please also state what these people do, so far as you know?

"A. Fred Godfrey, John F. Lapham, Dick Pope, Warren Torrey, John King, Billy Wise—is that enough?

"Q. 19. I would like to have you mention all you can.

"A. Fred Lamb, and a great many others. These gentlemen are in the flour and grain business, and all of them have offices in the Chamber of Commerce Building."

• • • • •  
"R.D. Q. 55. (By Mr. Hinton.) Mr. Skene, I wish you would state if you can remember, after you purchased this package of Beech-Nut cigarettes, and upon examination thereof, as you have testified,

found the name, P. Lorillard Company on there, what did you conclude?

"A. Either that they were being manufactured for the Beech-Nut people by Lorillard, or being distributed by P. Lorillard Company."

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ARTHUR A. SKINNER, grain broker, trading on the floor of the Boston Chamber of Commerce (Record, Vol. I, page 55) :

"Q. 3. I show you a package of cigarettes, which is in evidence in this case as Beech-Nut Exhibit No. 1. Have you ever seen these cigarettes before, and if so, when and where did you first see them?

"A. Why, I first saw them, probably, oh, somewhere in the spring. In fact, I bought a package down stairs.

"Q. 4. When you first saw these cigarettes by whom did you believe they were made?

"A. Why, I assumed that they were made by the Beech-Nut people, the gum people, the people that make candy and gum, and so forth.

"Q. 5. You may state, if you will, what led you to that belief.

"A. Why, because I had seen so much of the Beech-Nut gum, and if you knew the gum you would naturally think the Beech-Nut cigarettes were made by the same people.

"Q. 6. Did you continue to believe that the Beech-Nut people put out these cigarettes after you bought them?

"A. Why, yes; I never knew any different. I didn't know who made them, I assumed they were made by the same people, so far as I knew.

"Q. 7. When were you first informed that these cigarettes were not a product of the Beech-Nut Packing Company?

"A. Why, I never knew any different; in fact, I guess you were the first one that told me.

"Q. 8. And when was that?

"A. That was day before yesterday.

"Mr. Hinton: That is all the direct examination."

*Cross-Examination.*

"X-Q. 9. (By Mr. Cavanagh). Do you smoke, Mr. Skinner?

"A. Yes.

"X-Q. 10. Do you smoke Beech-Nut cigarettes?

"A. Why, I have smoked them. I smoke the Lucky Strike mostly. I smoke anything for that matter, pipe and cigars.

"X-Q. 11. About how often have you smoked these Beech-Nut cigarettes?

"A. Why, I don't think I ever bought but two packages. When they first came out a fellow had them on the floor, and I bought a package,—in fact, two packages.

.....  
"X-Q. 18. When you purchased the package of Beech-Nut cigarettes like this Plaintiff's Exhibit No. 1, to which you have referred, did you examine the wrapper of it?

"A. No, I took them out and smoked them.

.....  
"X-Q. 22. So when you purchased those cigarettes, after you examined them, you would have seen that name, P. Lorillard Co. on it, would you not?

"A. Oh, yes; if I examined them closely, but I didn't notice the cigarettes. I am not particularly interested in who makes them. I open them and smoke them. Of course, I don't know who makes the Fatimas, or the Camel, but I do know who makes Lucky Strike, because I smoke so many of them.

"X-Q. 23. You never really take the trouble to examine them?

"A. No."

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JOHN J. KING, grain broker on the Boston Chamber of Commerce (Record, Vol. I, page 58):

"Q. 3. I show you a package of cigarettes which is in evidence in this case as Beech-Nut Exhibit No. 1, and ask you whether or not you ever saw these cigarettes before, and, if so, when and where did you first see them?

"A. I have seen them at the Chamber of Commerce cigar stand.

"Q. 4. When was that?

"A. Oh, it was some little time ago, I don't know just how long. To tell you frankly, I never paid much attention to them anyway.

"Q. 5. When you first saw these cigarettes by whom did you believe that they were made?

"A. I understood they were a Beech-Nut product. The only Beech-Nut product I knew was bacon, and so forth.

"Q. 6. Will you tell us what you mean by a Beech-Nut product?

"A. Why, something put out by the people who put out peanut butter, bacon and so forth.

"Q. 7. Please state, if you know, what it was that led you to that belief.

"A. Why, I simply thought that. I only knew that there was only one Beech-Nut Company, and that was the people who put out the other stuff.

"Q. 8. Did you ever smoke any of these cigarettes?

"A. One or two.

.....  
"Q. 10. Do you now believe that these cigarettes are the product of the Beech-Nut Packing Company?

"A. No.

"Mr. Cavanagh: Objected to as leading.

"Q. 11. When did you first find that these cigarettes were not a product of the Beech-Nut Packing Company?

"A. Upon talk with Colonel Skene, about two months ago.

"Q. 12. Is Colonel referred to Robert Skene, Jr.?

"A. Yes.

"Q. 13. Did he give you this information before or after you had smoked these Beech-Nut cigarettes, do you remember?

"A. I believe it was after.

"Q. 14. Did you subsequently purchase any of these cigarettes?

"A. No."

RICHARD E. POPE, grain merchant trading on the floor of the Boston Chamber of Commerce (Record, Vol. I, page 62) :

"Q. 4. Mr. Pope, I show you a package of cigarettes, which is in evidence in this case as Beech-Nut Exhibit No. 1, and ask you if you have ever seen these cigarettes before, and if so, when and where did you first see them?

"A. Well, I would not remember the exact date. I bought some here in the building, I remember, when they were first put on sale.

"Q. 5. Could you tell me the approximate date?

"A. Well, three or four months ago, I guess.

"Q. 6. Was it in the spring or summer?

"A. It was in the spring.

"Q. 7. Would you be able to say it was early or late spring?

"A. No, I could not.

"Q. 8. When you first saw these cigarettes, Mr. Pope, by whom did you believe they were put out?

"A. The people who put out Beech-Nut bacon—I don't know who they are.

"Q. 9. Did you buy a package of these cigarettes with that belief?

"A. I did, yes, naturally.

"Q. 10. Do you now believe that the people who put out Beech-Nut bacon put out these cigarettes?

"A. No, I know they don't.

"Q. 11. When and how, if you remember, were you first informed that these people did not put out these cigarettes?

"A. Why, in conversation with Mr. Skene, he told me that they did not make them, which was a surprise to me.

"Q. 12. Is the Mr. Skene you have referred to, Mr. Robert Skene, Jr.?

"A. Yes.

"Q. 13. Who does business in this building, and on the floor?

"A. Yes.

"Q. 14. Mr. Pope, will you state, if you are able to, why you believed that this was a product of the same people who put out the bacon, if you remember?

"A. Well, because of the extreme popularity of the Beech-Nut bacon, it was a likely brand to attract popular attention. Therefore I supposed they were using it with a cigarette, as they had with their other products. It was a perfectly natural conclusion, I should say, that was.

• • • • •

*Cross-Examination.*

"X-Q. 17. (By Mr. Cavanagh.) Did you ever hear or know of the P. Lorillard Company?

"A. Oh, yes.

"X-Q. 18. You know they are a large tobacco concern, do you not?

"A. Yes, I know they are.

"X-Q. 19. Will you examine this cigarette package, Plaintiff's Exhibit No. 1? What name appears on it?

"A. P. Lorillard Co.

"X-Q. 20. Would that indicate to you that it was a package of P. Lorillard Company?

"A. I would not notice it. I don't know who makes Lucky Strike, even.

"X-Q. 21. So you don't examine the label?

"A. No, I am like a Chinaman, I will take a chop without any knowledge of what goes with it."

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THOMAS F. MALONEY, a salesman doing business at the Boston Chamber of Commerce (Record, Vol. I, page 68) :

"Q. 5. I show you a package of cigarettes, which is in evidence in this case as Beech-Nut Exhibit No. 1. Have you seen these cigarettes before, and if so, will you please state when and where you first saw them?

"A. Why, I saw the cigarettes in the hands of another fellow at one time, and the next time I bought cigarettes I bought them myself. I don't know exactly at what store.

"Q. 6. When you saw and bought these cigarettes, by whom did you believe they were put up?

"A. Why, not having any interest in it, I natur-

ally associated the name of Beech-Nut with the ham products, and so forth.

"Q. 7. Did you continue to believe this after you had bought and smoked the cigarettes?

"A. Surely; I didn't give it any thought.

"Q. 8. Do you now believe that these cigarettes are put up by the same people who put out the gum?

"A. No, I know differently than that.

"Q. 9. Will you state how and when you first learned that these cigarettes were not put out by the people who put out the gum?

"A. The first I knew of it was when you came around the other day and told me about it. I don't know what the day was, Thursday or Friday,—Thursday, I think it was."

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GEORGE CATLIN, a broker trading on the floor of the Boston Chamber of Commerce (Record, Vol. I, page 70):

"My name is George Catlin, and I am a member of the firm of Catlin & Company, brokers. I trade on the floor of the Boston Chamber of Commerce. I first saw Beech-Nut cigarettes, similar to Beech-Nut Exhibit No. 1, on the cigar stand in the Chamber of Commerce Building, Boston, early in the spring of 1921; when I first saw these cigarettes I believed that they were made by the Beech-Nut people, the same people that make the other Beech-Nut products, like the ham, chewing gum, and so forth. I never bought a package of these cigarettes, but have smoked them when my friends had them. I continued to believe that these cigarettes were made by the Beech-Nut people until I was told, on August 12, 1921, by Mr. Hinton, that they were not a product of the Beech-Nut Packing Company. My reason for believing that these cigarettes were the product of the Beech-Nut Packing Company was the name 'Beech-Nut,' and the appearance of the package."

W. G. TORREY, a miller representative trading on the floor of the Boston Chamber of Commerce (Record, Vol. I, page 71):

"Q. 4. I show you a package of Beech-Nut cigarettes, which is in evidence in this case as Beech-Nut No. 1. Have you ever seen this cigarette before? If so, when and where did you first see them?

"A. Why, I think I first saw them probably at the cigar stand on the street floor of the Chamber of Commerce.

"Q. 5. When was that?

"A. That I cannot say, some time last year, as I remember.

"Q. 6. Do you mean during the year 1920?

"A. I should say during the year 1920; it might have been before that—just as soon as they came out, I know, and were for sale, I saw them.

"Q. 7. When you first saw these cigarettes, by whom did you believe that they were put out?

"A. The Beech-Nut Packing Company, Arkell & Smiths Company—we say Arkell & Smiths, because they are familiar to us, thinking they are the same concern that handle the Beech-Nut lines.

"Q. 8. You have referred to the Beech-Nut products. Will you give an illustration of what you mean by Beech-Nut products?

"A. Why, we have a number of them that we use at home; I guess Beech-Nut bacon is one, and—I can't say right off-hand what they are; we have different things; I think they are jellies and jams, and things of that sort, if they make them.

"Q. 9. Will you state, if you can remember, and if you know, why you believed that these cigarettes were a product of the Beech-Nut Packing Company when you saw them?

"A. They are the only people that I ever connected the name with.

"Q. 10. Have you a general familiarity with the label which has appeared on various products of the Beech-Nut Packing Company?

"A. Yes.

"Q. 11. Did the dress of this package of cigarettes, by dress, its general appearance, have any-

thing to do with your believing that it was a product of the Beech-Nut Packing Company?

"A. The name was the first thing that led me to think it was theirs, because I never connected the name with any other concern than the Beech-Nut people in Canajoharie. I have traveled through there many times and have seen their sign, and knew the members of the concern.

"Q. 12. The last question is repeated.

"A. Yes.

"Q. 13. Will you explain what you mean?

"A. Well, the brand on the cigarettes led me to believe that it was one of the products of the Beech-Nut Packing Company.

"Q. 14. Will you tell me, please, Mr. Torrey, whether you now believe that these cigarettes are a product of the Beech-Nut Packing Company?

"A. No, I do not.

"Q. 15. Will you state, if you can remember, when and how you first found out that these cigarettes were not a product of the Beech-Nut Packing Company?

"A. Why, I think after buying packages of them I discovered some tobacco company's name on the package, and, as I recall, I spoke of the matter to Mr. Skene, who represents Arkell & Smiths here, who are the same people as the Beech-Nut people, I spoke to him about it—I don't know that he knew it at the time until we talked the matter over, that there was such a cigarette on the market, and then I learned it had nothing to do with the Beech-Nut Company.

"Q. 16. Did Mr. Skene tell you this, do you remember?

"A. In conversation with him, I think he told me that they didn't."

W. J. BUCKLEY, of Boston, Mass., employed by the Southworth Company, brokers (Record, Vol. I, page 76):

"I am of lawful age, and am employed by the Southworth Company, brokers, who have offices here in the Chamber of Commerce Building, Boston, Massachusetts.

"I first saw cigarettes similar to Beech-Nut Exhibit No. 1 on the cigar stand in the Chamber of Commerce Building, Boston, Massachusetts; subsequently I remember that my friend, Thomas Maloney, who is employed in the same building, bought a package of these cigarettes and he had them on the table at lunch. I smoked some of the cigarettes. When I first saw the Beech-Nut cigarette, and when I smoked them, I believed that they were a product of the Beech-Nut Packing Company, the same people who make the ham, bacon, chewing gum, and other products. I continued to believe that these cigarettes were the product of the Beech-Nut Packing Company until Mr. Hinton told me, on August 12, 1921, that they were not."

**APPENDIX B, LIST OF WITNESSES.**

[Page numbers of the brief where Appendix B is referred to are shown in the list of Appendices appearing on the blue page immediately preceding the Appendices section.]

**Plaintiff's Witnesses Who Dealt in or Used Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes in the Belief That These Articles Were Products of the Beech-Nut Packing Company.**

Of the witnesses listed below Carlson, De Rago, Hammerman, Hayden, Kramer, Sage, Watson, Wedel and Yunkers, being themselves deceived, innocently deceived their customers by express statement to them that the Lorillard Beech-Nut cigarettes and scrap tobacco were products of the Beech-Nut Packing Company.

The witnesses Aisenberg, Branigan, Glynn, Godfrey, Housling, Huttner, Lynch, McFadzen, Neal and O'Connor either state that they found the Beech-Nut cigarettes inferior to the other Beech-Nut products, or state that they never bought any more of the Beech-Nut cigarettes after the first package.

(D)—Dealer; (C)—Consumer.

- (D) EDWARD ABRAMS, of Stamford, Conn., proprietor of a hotel news and tobacco stand and of a cigar store—R., Vol. I, page 387.
- (D) JOSEPH S. AISENBERG, of Worcester, Mass., wholesale grocer—R., Vol. I, page 148.
- (C) R. J. ANDREWS, of West Hartford, Conn., clerk in the store of J. Burnham—R., Vol. I, page 341.
- (C) FRANK ARNOLD, JR., of New York City, an advertising accountant employed by H. K. McCann & Co.—R., Vol. V, page 2499.
- (C) J. F. BALLARD, retail meat dealer, Chicago, Illinois —R., Vol. I, page 478.

- (C) A. V. BOBB, proprietor of a meat market, Chicago, Illinois—R., Vol. I, page 483.
- (C) D. L. BOTTOMLY, of Worcester, Mass., a grocery clerk—R., Vol. I, page 166.
- (C) T. J. BRANIGAN, of New Haven, Conn., employed in a shoe store—R., Vol. I, page 285.
- (D) J. E. BRIMAKOW, manager cigar department of the Kiefer Drug Company, Milwaukee, Wisconsin—R., Vol. I, page 612 (for relations with customers, see Qs. 8-11).
- (D) ROBERT N. BROUGHTON, of Springfield, Mass., druggist—R., Vol. I, page 228.
- (C) R. A. BROWN, of Hartford, Conn., adjuster for the Ocean Insurance Company—R., Vol. I, page 336.
- (C) W. J. BUCKLEY, Boston, Mass., employed by the Southworth Company, brokers—R., Vol. I, page 76.
- (D) A. H. CARLSON, of Chicago, Illinois, formerly part owner of cigar store—R., Vol. I, page 423 (For express deception of customers see Qs. 11, 12, 13).
- (D) GEORGE L. CARLTON, grocer, Holyoke, Mass.—R., Vol. I, page 232.
- (D) JAMES J. CASHMAN, JR., of New Haven, Conn., a drug clerk—R., Vol. I, page 263.
- (D) TRACY N. COLLINS, proprietor of a grocery and general store at Noroton, Conn.—R., Vol. I, page 378.
- (D) CHARLES P. COOK, of Paris, Kentucky, a grocer—R., Vol. I, page 695.
- (D) JOSEPH DE RAGO, of Hartford, Conn., proprietor of a general store—R., Vol. I, page 329 (For express deception of customers see Q. 12).
- (D) HENRY DIECKMAN, grocer selling tobacco products at Toledo, Ohio—R., Vol. I, page 633.

- (C) G. FRANK DISBROW, of South Amboy, N. J., skilled laborer, employed by South Amboy Terra Cotta Company—R., Vol. V, page 2491.
- (D) JAMES EUSTACE, of Hartford, Conn., employed by the Sigourney Grocery Company—R., Vol. I, page 335.
- (D) ARTHUR E. FECHTER, of Chicago, Illinois, proprietor of a drug store—R., Vol. I, page 437.
- (D) HENRY W. FOOTE, proprietor of a delicatessen and grocery store, Milwaukee, Wis.—R., Vol. I, page 565.
- (D) ALEXANDER C. GARDNER, of Milford, Conn., proprietor of a grocery and confectionery store—R., Vol. I, page 309 (For relations with customers see Qs. 15-18).
- (D) CHARLES E. GEARY, clerk in drug store, Salem, Mass.—R., Vol. I, page 130.
- (C) EDWARD J. GLYNN, West Haven, Conn., a clerk—R., Vol. I, page 267 (Inferiority of Beech-Nut Cigarettes, Q. 15).
- (C) A. W. GODFREY, Boston, Mass., mill representative—R., Vol. I, p. 49.
- (D) NATHAN HAMMERMAN, of New Haven, Conn., a drug clerk—R., Vol. I, page 276 (For express deception of customers, see Qs. 11, 12).
- (C) NEWTON HARRISON, of Milford, Conn., editor of "The Central Station," an electrical journal and owner of a dry goods business—R., Vol. I, page 317.
- (D) JEFFERSON D. HAYDEN, Columbia, S. C., a grocer—Vol. I, page 754 (For express deception of customers, see Qs. 48-49).
- (C) C. HOUSLING, of Hartford, Conn., clerk in the store of C. P. Case—R., Vol. I, page 339.

- (D) MARGARET M. HUNT, clerk at cigar stand in the Chamber of Commerce Building, Boston, Mass.—R., Vol. I, page 77.
- (C) DANIEL HUTTNER, butcher, Chicago, Illinois—R., Vol. I, page 485.
- (D) OSCAR JOSEPH, of Saba & Joseph, proprietor of a grocery and meat market, Toledo, Ohio—R., Vol. I, page 617 (For relations with customers, see Qs. 12-14).
- (D) JOHN JOZSA, grocery clerk and meat cutter for Saba & Joseph, Toledo, Ohio—R., Vol. I, page 625.
- (C) CLEMENT W. KIRKPATRICK, assistant to the general manager of the Fisk Rubber Company, Chicopee Falls, Mass.—R., Vol. I, page 210.
- (D) S. S. KRAMER, of Hartford, Conn., proprietor of a delicatessen and tobacco store—R., Vol. I, page 334 (For express deception of customers, see page 334).
- (D) F. J. LATZEL, proprietor of a delicatessen store at Oak Park, Illinois—R., Vol. I, page 491.
- (C) HENRY LE CLAIR, of Holyoke, Mass., a grocer—R., Vol. I, page 241.
- (D) LEO LEWIS, cigar clerk, Boston, Mass.—R., Vol. I, page 80 (For relations with customers, see Qs. 12-16).
- (C) P. LYNCH, of West Hartford, Conn., clerk in Burnham's market—R., Vol. I, page 340.
- (C) E. J. McFADZEN, a grocer, West Allis, Wis.—R., Vol. I, page 555.
- (C) THOMAS F. MALONEY, salesman, Boston Chamber of Commerce—R., Vol. I, page 68.
- (C) JAMES F. MASTERSON, of Brooklyn, New York, writer of financial news, who published articles attributing Beech-Nut cigarettes and tobacco to plaintiff—R., Vol. V, page 2483.

- (D) JAMES MATREACE, of West Hartford, Conn., clerk in grocery and general store of O. Matreace—R., Vol. I, page 343.
- (C) JOHN MEAD, clerk, Hartford, Conn.—R., Vol. I, page 342.
- (D) EDWARD MOSCOVITZ, clerk in Shriver's Cigar Company, Salem, Mass.—R., Vol. I, page 126.
- (D) GEORGE F. MOULTON, retail druggist, South Norwalk, Conn.—R., Vol. I, page 376.
- (D) THEODORE MUELLER, druggist, Milwaukee, Wisconsin—R., Vol. I, page 605.
- (C) FRANKLIN G. NEAL, lawyer, Springfield, Mass.—R., Vol. I, page 201.
- (D) H. A. NEFF, grocer selling tobacco products at Toledo, Ohio—R., Vol. I, page 633.
- (D) CARL W. NEMETZ, retail grocer, Milwaukee, Wisconsin—R., Vol. I, page 550.
- (D) FRANK O'CONNELL, grocer handling tobacco products at Toledo, Ohio—R., Vol. I, page 633.
- (C) MICHAEL O'CONNOR, clerk in a general store, public market, Holyoke, Mass.—R., Vol. I, page 236.
- (D) MRS. AMELIA PETERSEN, helps in her husband's grocery store at Manitowoc, Wis.—R., Vol. I, page 501.
- (C) RICHARD E. POPE, grain merchant, Boston Chamber of Commerce—R., Vol. I, page 62.
- (D) MIKE SABA, of Saba & Joseph, proprietors of a grocery and meat market, Toledo, Ohio—R., Vol. I, page 622.
- (D) JOHN SABELIS, in charge of the commissary department of the International Harvester Company at their plant at West Pullman, Illinois—R., Vol. I, page 444.

- (D) WILLIAM H. SAGE, of Wheaton, Illinois, employed as a druggist in Chicago, Illinois—R., Vol. I, page 417 (For express deception of customers, see Qs. 13-14).
- (C) C. A. SATTIG, employed in the grocery and meat market of his father, Adam Sattig, at Milford, Conn.—R., Vol. I, page 316.
- (D) LLOYD SCHULTZ, grocery clerk, employed by Saba & Joseph, Toledo, Ohio—R., Vol. I, page 628.
- (D) ISABEL SHAFFER, clerk in drug store selling tobacco products at Toledo, Ohio—R., Vol. I, pages 633-635.
- (D) W. SHAFFER, grocer selling tobacco products at Toledo, Ohio—R., Vol. I, page 633.
- (C) ROBERT SKENE, Jr., representative of Arkell & Smiths Company, Boston, Chamber of Commerce —R., Vol. I, page 38.
- (C) ARTHUR A. SKINNER, grain broker, Boston, Chamber of Commerce—R., Vol. I, page 55.
- (C) WILLIAM I. THOMAS, grocer, Chicago, Illinois—R., Vol. I, page 469.
- (C) W. G. TORREY, miller representative, Boston, Chamber of Commerce—R., Vol. I, page 71.
- (D) JOHN E. WATSON, druggist, Chicago, Illinois—R., Vol. I, page 411 (For express deception of customers, see Qs. 14-15).
- (D) MRS. MATILDA WEDEL, proprietor of tobacco and candy stand in lobby of large downtown office building, Chicago, Illinois—R., Vol. IV, page 2208 (For express deception of customers, see Q. 10).
- (D) WILLIAM C. WEIGEL, of Milwaukee, Wisconsin, a retail grocer—R., Vol. I, page 560.

- (D) CLARENCE A. WILKINS, Lynn, Mass., retailer of confectionery, tobacco, and periodicals—R., Vol. I, page 107 (For relations with customers, see Q. 7).
- (D) IDA W. WILKINS, Lynn, Mass., assists in her husband's confectionery and tobacco store and news stand—R., Vol. I, page 119 (For relations with customers, see Q. 10).
- (D) ROY J. YUNKERS, manager of retail tobacco store (one of well-known chain) in large downtown office building, Chicago, Illinois—R., Vol. IV, page 2218 (For express deception of customers, see Q. 18).

## APPENDIX C, DECEPTION OF PUBLIC PROVED BY DEFENDANT'S WITNESSES.

[Page numbers of the brief where Appendix C is referred to are shown in the list of Appendices appearing on the blue page immediately preceding the Appendices section.]

Five of the witnesses from whose testimony quotations appear in this appendix are salesmen for the Lorillard Company and the others are dealers in tobacco. The five Lorillard salesmen are Schimmel, Marks, Hopewell, Degan and Burgeson. Burgeson, as will be seen from the part of his testimony quoted in this appendix, admits that deception of the public was expected, said that was natural on account of the similarity of name but that it did not occur as much as expected.

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Defendant's witness, L. G. CAUTO, a cigar salesman at Boston, for L. K. Liggett & Co. (R., Vol. II, pages 977-978):

"X-Q. 15. Will you tell me during that moment, when you picked up the package of cigarettes and saw the Beech-Nut brand, and were in doubt about it,—who did you think might be the manufacturer?

"A. Some cigarette company, because I knew that the gum people manufactured gum, and right away I used my head and said that they were not made by the gum people, but some cigarette people.

"X-Q. 16. What suggested the gum people to you?

"A. Because they carry gum, the Beech-Nut gum on the counter.

"X-Q. 17. When you looked at the package of cigarettes, what did you think of, what gum company?

"A. When the cigarettes were put in, I had them on the counter and, why, I thought of the Beech-Nut people. I had about 25 customers question that, and that was a natural question; not that they cared who

made it, but they said this, 'Made by the people who make the gum?' And I corrected them. I said, 'The gum is made by the gum company, in Canajoharie, and Brooklyn, N. Y.,' and that is all. That adjusted the matter, when I told them that the gum and cigarettes were two different products.

"X-Q. 18. And you always put them straight on that?

"A. I put them straight, yes, because I wanted them to be straight about it, being in the business, and I wanted to be straight, because it is instant dismissal for misrepresenting any of the goods.

"X-Q. 19. Yes, but they are not all as strict as you people are in regard to that, are they?

"A. No, I don't believe they are."

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Defendant's witness, BENJAMIN HURVITZ, manager of a tobacco business in Boston, Mass. (R., Vol. II, pages 1009-1010):

"Q. 16. State whether or not you ever had any inquiries or heard any comments from customers or others that would lead you to believe that they were under such an impression.

"A. Well, really, in the handling of cigarettes and gum,—or cigarettes, rather, from the time of its inception, and the gum at pretty nearly the same time,—and of course, that is almost a year and a half now; and the inquiries whether Beech-Nut cigarettes and the Beech-Nut gum were made by the same company haven't been over two or three,—they have been by retail consumers only.

.....  
"Q. 23. Did you ever know the Beech-Nut Packing Company to put out any tobacco products?

"A. No; if they had put out tobacco products we would have been interested to buy their product.

"Mr. Hinton: What is that?

"The Witness: If we did know they put out tobacco products we would buy their tobacco products direct. But, so far as I know, they don't put it out."

Defendant's witness, MAX DUBLIN, manager of a wholesale and retail tobacco establishment in Boston (R., Vol. II, pages 1045-1046) :

"X-Q. 49. It is very simple, isn't it? Now you said that you had an occasional inquiry from a customer about whether one concern that makes the gum, whether the same concern makes the cigarettes, indicating some doubt in the mind of the customer. Is that the fact?

"A. Why, I have had—yes, I have had very few retailers that I sell, which I sell to, small dealers, I don't sell to the big stores, and I have had perhaps a few consumers that I have heard them talking, but not while the purchase was made in the store. When the Beech-Nut cigarette first came out, I said, that is the same brand that they have had—they have had that brand for years. They had the Beech-Nut scrap, which I have always carried and I have always informed the public that one brand was the Beech-Nut Packing Company, and the other the P. Lorillard Co., that makes the Helmars and the Trophies, and so forth.

"X-Q. 50. But you say you have had this question come up with the retailers to whom you have sold the Beech-Nut cigarette?

"A. I have had one or two, or more. I wouldn't say definitely on it, and I satisfied them,—I showed them the name on the goods. In fact, I can't tell why they ask me, because the name 'P. Lorillard Co.' is there. The fact is, when I see this picture on the Murad, when I see the picture, I know it is very plain that it is Lorillard's. When you see that brand you know it is their brand."

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Defendant's witness, BENJAMIN LESCOVITZ, retail store-keeper, sells tobacco, chocolates, etc., East Cambridge, Mass. (R., Vol. II, pages 1064, 1066-1067) :

"Q. 10. Did you ever have any inquiries or comments from anybody who did believe it?

"A. Yes, sir; I had two fellows ask me, and they said, 'Benny, what is this? Is this made by the same

company (pointing to a package of Beech-Nut cigarettes) as the Beech-Nut chewing gum?' I says, 'No, this is made by the P. Lorillard Company (pointing to a package of Beech-Nut cigarettes), and this is made by the Beech-Nut Packing Company (referring to a package of Beech-Nut chewing gum). Only them two fellows asked me that.

"Q. 11. How long ago was that?

"A. That was last winter. They didn't ask the question because they were interested, but because of curiosity they asked it.

"Mr. Hinton: The last part of the answer is objected to as a conclusion of the witness.

"X-Q. 4. You didn't keep any notes of the names of people who asked you about whether or not the cigarettes were made by the gum people, did you?

"A. No, I didn't.

"X-Q. 5. You didn't make any effort to remember it at all?

"A. Absolutely no; because you see the customers are in the store, and they simply asked me, as a foolish question: 'Say, Benny, is this the same company, the Beech-Nut gum and the Beech-Nut cigarette?' And I said, 'No, the gum is made by the Beech-Nut Packing Company and the cigarettes are made by P. Lorillard Co.' "

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Defendant's witness, GEORGE C. SMITH, manager of a tobacco store in Boston (R., Vol. II, page 1082):

"X-Q. 3. Now, Mr. Smith, did you make any particular note of the inquiries that you referred to, about whether the cigarettes were made by the gum people,—did you make a note of it at the time?

"A. I made no note of it, no.

"X-Q. 4. Did you pay any particular attention to it?

"A. No.

"X-Q. 5. Did you make any effort to remember it?

"A. No, I didn't.

"X-Q. 6. But you can remember two cases?

"A. I can remember two cases, there may have been five or six, but I can't remember over two.

"X-Q. 7. There may have been others?

"A. There may have been others, but I don't remember it."

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Defendant's witness, AARON ANSEL, owner of a cigar store in Boston (R., Vol. II, p. 1086).

"Q. 14. Will you state whether or not during your experience or service in your store you ever have had any questions come up, or heard any remarks or inquiries from customers, or others, which would leave you under the impression that they thought the gum people made the cigarettes?

"A. Well, just once; I recall one person."

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Defendant's witness, GEORGE DOUGALL, manager of cigar department in a L. K. Liggett store in Boston (R., Vol. II, pp. 1090-1091):

"Q. 12. Will you state whether or not you were ever under the impression that the Beech-Nut cigarettes were made by the same people that make the Beech-Nut chewing gum?

"A. Why, I never was under the impression. There was only once that I can remember when a young fellow asked me, when they first started, he came in—

"Q. 13. I mean yourself—were you ever yourself under the impression that the Beech-Nut cigarettes were made by the same concern that makes the gum?

"A. No, sir.

"Q. 14. Well, will you please state whether or not you have had any questions, inquiries, or comments made by customers, or others, which would lead you to think that they were under the impression that these cigarettes were made by the gum people?

"A. I have just had one instance that I remember.

"Q. 15. Please state it.

"A. That is when the cigarettes first came out

somebody came in the store and asked me if they were made by the same people that made the gum.

"Q. 16. What was your answer?

"A. Why, I told them that the cigarettes were made by the P. Lorillard Co., and that the gum was made by the Beech-Nut Packing Company."

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Defendant's witness, EDWARD ADELMAN, owner of a cigar store at Salem, Mass. (R., Vol. II, pp. 1116, 1119):

"Q. 15. In your experience in the tobacco business in stores have you ever heard any comments or any inquiries from customers or others which would lead you to believe that they were under the impression that the same concern that made the gum made the Beech-Nut cigarettes?

"A. No. I have had people ask me, 'Is it made by the same company?' But they were not impressed that it was. In fact, the name on the cigarette, or in the advertising I have seen always had the name Lorillard on it.

"Mr. Hinton: The witness' statement as to the impression of the people who asked him the question referred to is objected to as a conclusion of the witness, and the last part of the answer objected to as volunteered.

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"X-Q. 17. Now, how many customers do you suppose ever asked you whether the Beech-Nut cigarettes were made by the gum people?

"A. I don't think there was over one or two that I had any talk with about them."

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Defendant's witness, DENNIS T. O'CALLAHAN, salesman in a tobacco store in Salem, Mass. (R., Vol. II, p. 1130):

"X-Q. 4. Now, how many people do you suppose you have discussed this question with as to who makes the Beech-Nut cigarette and the Beech-Nut chewing gum?

"A. I think about a half a dozen. It would be

only in conversation you know. Sometimes some one would be talking and the question would be brought up, and they would leave it to me as a tobacco man to decide, and I would try to tell them, so far as I knew, that there was a distinction between the parties who made the food products and the Beech-Nut tobacco products."

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Defendant's witness, FERDINAND RIGALI, JR., owner of a fruit and tobacco store at Holyoke, Mass. (R., Vol. II, p. 1193):

"Q. 16. Will you please state whether or not you ever had any customers ask any questions or make any inquiry which would lead you to believe that they thought the Beech-Nut cigarettes were made by the same people that made the gum?

"A. I have had to my, I think I had about two people ask me. I couldn't say who the people were; just people that came into the store.

"Q. 17. How long ago was that?

"A. Quite a while after they came out one party asked me who made the Beech-Nut cigarette and went as far as to ask me if the Beech-Nut Packing Company made them. I told them certainly not, that's as far as the argument went. He didn't know probably.

"Q. 18. Those are the only two occasions?

"A. That's the only two occasions I have had unless the other boys have had."

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Defendant's witness, WILLIAM D. LILLY, owner of a cigar store in Baltimore (R., Vol. II, pp. 1249-1250):

"When the cigarettes first came out I remember hearing a few questions from customers indicating that they thought that the same company made the cigarettes and the gum."

Defendant's witness, MICHAEL SPHEERIS, owner of a tobacco and candy store at Milwaukee, Wisconsin (R., Vol. II, p. 1435) :

"X-Q. 57. But is it the usual thing for a customer to ask you who makes the article he is buying?

"A. Well, that I don't say; none ever mentioned to me, maybe it was once or twice, whether it is made by the same people make the Beech-Nut cigarettes, the gum was made by the same people or,—well, I always knew that. I explained it to him. Maybe there is one or two since I have been in business, there, asked if it was the same people made the Beech-Nut cigarette that made the Beech-Nut gum, but I never had that asked very often.

"X-Q. 58. Do you remember what these you mentioned who did ask,—do you remember what they said?

"A. I remember a fellow once asked me, he said: 'Is this the same people is making the Beech-Nut gum?' I said, 'Lorillard only makes tobacco; don't make any gum.' "

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Defendant's witness, MAURICE J. SCHIMMEL, salesman for the Lorillard Company at Milwaukee, Wisconsin (R., Vol. II, pp. 1453, 1455) :

"X-Q. 61. Have you heard any question asked or any comments or inquiries as to whether the Beech-Nut cigarettes and scrap tobacco were made by the people that made the gum?

"A. Very little.

"X-Q. 62. But have you heard a few?

"A. Once or twice, but very seldom. I did hear once in a while something.

"X-Q. 63. Can you tell any of the things that you heard?

"A. No, sir.

"R-D. Q. 82. You say that on one or two occasions you might have heard people ask you, 'Were the cigarettes made by the gum people or Beech-Nut Packing Company?' What did you tell them?

"A. Why, they would say to me, 'Well, we sell your Beech-Nut gum,' and I would emphatically deny it and say, 'Beech-Nut gum was not made by P. Lorillard Tobacco Company; it was made by the Beech-Nut Packing Company.'

"R-D. Q. 83. How often would that happen?

"A. Very few times."

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Defendant's witness, ALBERT MARKS, of Green Bay, Wis., salesman for the Lorillard Company (R., Vol. II, pp. 1496-1497):

"X-Q. 187. During your experience in selling or conducting the sales of Beech-Nut scrap tobacco did you hear any questions at all or any comments about whether this Beech-Nut scrap tobacco is made by the same people that put out the Beech-Nut gum and Beech-Nut peanut butter and those other Beech-Nut products?

"A. Well, I will tell you, I don't just recall of any special place or anything of that kind, but I will be safe in saying I have had perhaps a mighty few ask me that question, but I cannot recall of having very many ask me that.

"X-Q. 188. You didn't try to remember such incidents, I suppose at the time?

"A. No, because we really were not interested in anything about anybody else. The only thing, if I was asked that question, as near as I can remember, that I would immediately deny it, of course, and say that this was the P. Lorillard Company, that has always been our by line, understand, you know."

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Defendant's witness, FRANK HOPEWELL, of Milwaukee, Wis., salesman for the Lorillard Company (R., Vol. II, pp. 1516-1517):

"X-Q. 125. Have you heard any questions asked or any comments at all about whether anyone was questioning who the maker of the Beech-Nut cigarettes was?

"A. No, I never saw at any time where there was any confusion about who made Beech-Nut cigarettes.

"X-Q. 126. But have you had any questions asked you by dealers or consumers as to whether the Beech-Nut cigarettes were made by the same people made the Beech-Nut gum and peanut butter?

"A. I never had a question of that kind put to me by a consumer in my life.

"X-Q. 127. Or a dealer?

"A. Or a dealer.

"X-Q. 128. Did you make any attempt to remember such a thing?

"A. I believe I would have remembered it if it had really happened.

"X-Q. 129. You never heard one single question?

"A. I never heard a dealer that ever asked me—

"X-Q. 130. Or a consumer?

"A. Or a consumer ever asked me if the Beech-Nut Packing Company made Beech-Nut cigarettes or Beech-Nut tobacco.

"X-Q. 131. Did you hear any discussion on that point?

"A. Well, whether I have heard Beech-Nut gum discussed along with possibly my being interested in the sale of Beech-Nut chewing tobacco and cigarettes, —yes, possibly. In fact, yes.

"X-Q. 132. Can you remember any of those instances?

"A. Why, yes, I can remember where dealers—not only dealers, but where I am well acquainted with the dealer, in his conversation he would say, 'If this Beech-Nut cigarettee of yours will sell as well as your Beech-Nut tobacco it will be a good seller,' and he would go on and say, 'Beech-Nut gum sells well too.' There was no confusion with that dealer though, that they were made by the same company whatsoever.

"X-Q. 133. Did the dealer in such a case tell you there was no confusion in his mind?

"A. Why no, I don't expect him to take particular time and attention to tell me. If there wasn't any confusion naturally, he wouldn't tell me.

"X-Q. 134. How do you know what was in his mind?

"A. I wouldn't know what was in his mind."

Defendant's witness, WADE H. BROWN, of Chicago, district manager of the Lorillard Company (R., Vol. II, p. 1592) :

(Page 1598) :

"Q. 41. Have you heard any comments, inquiries or remarks from customers or consumers to the effect or which would lead you to believe that they were under the impression that the Beech-Nut cigarettes or the Beech-Nut scrap tobacco were made by the same people that make the Beech-Nut chewing gum, Beech-Nut peanut butter, and other food products?

"A. Well, when I first began introducing the Beech-Nut cigarettes. I had possibly half a dozen dealers that asked me if we made the Beech-Nut gum and I told them no, we did not; that the Lorillard Tobacco Company made the Beech-Nut cigarettes, Beech-Nut chewing tobacco, Climax, Murad, Helmar and brands of that kind, and that we were in the tobacco business and not the gum or food business."

(Pages 1613-1614) :

"X-Q. 164. And how many inquiries, comments or remarks did you hear in regard to who made the Beech-Nut cigarettes and as to whether they were made by the same people that make the Beech-Nut gum?

"A. Well, not over half a dozen retailers asked me that question, but here is what they asked: 'Do you people make the gum?' I would say approximately six, half a dozen dealers.

"X-Q. 165. Can you describe some of those instances where they occurred?

"A. No, I cannot, Mr. Johnson, I could not.

"X-Q. 166. Did you make any attempt to remember such inquiries, comments or remarks?

"A. No; I just enlightened the man and told him we had nothing to do with the Beech-Nut gum; that it was the Lorillard Tobacco Company that made tobacco.

"Mr. Johnson: Read the question, please.

"(The question was read.)

"X-Q. 167. Did you make any attempt to remember such instances?

"A. No, I did not.

"X-Q. 168. Did anyone ask you to make a note or remember any such instances that might occur?

"A. No, sir. In every instance where those approximately half a dozen occurred, I explained to them very thoroughly that Lorillard made Beech-Nut chewing tobacco, Murad, Helmar and those brands of tobacco; that we had nothing to do with the gum business; we were in the tobacco business, cigarette business, and not the gum business or food commodities or anything of that sort.

"X-Q. 169. You were pretty busy during that time, were you not?

"A. Well, I was, naturally, as I am busy now. I was busy; yes, sir, I was. I manage to keep busy all the time, Mr. Johnson.

"X-Q. 170. When you say that you have heard a half a dozen of such inquiries or remarks, you mean you do not remember any more than that?

"A. No, I cannot. I never heard any more than that, I say approximately six; in all, half a dozen.

"X-Q. 171. Can you give the names of any of those six parties who have asked?

"A. Oh, no. As I have just told you, I did not pay much attention to it, and explained to the dealer we were in the tobacco business and did not make gum and explained to him thoroughly what we made. I didn't pay much attention to it."

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Defendant's witness FRANK C. DEGAN, of Chicago, salesman for the Lorillard Company (R., Vol. II, pages 1642-1643):

"X-Q. 61. Have you ever heard any discussion at all, or any questions asked as to who made the Beech-Nut cigarette?

"A. You mean the dealer?

"X-Q. 62. Anybody.

"A. That question is rather broad, Mr. Johnson. I wouldn't know just how to answer that. I would have to answer it in blanket no.

"X-Q. 63. Anybody on your rounds as you have gone about the City of Chicago or your Indiana district?

"A. Oh, I heard once or twice, not over that, I don't think, they would ask or make the comment: 'This is not made by the people that make the gum, is it?' I have had that occur to me once or twice. They seemed to take it for granted that it was not.

"X-Q. 64. Can you describe where or when such incidents as that occurred?

"A. No, I cannot. I attached no importance to them at the time at all; none whatever. I had made a practice of giving the dealer to understand that I was from the Lorillard, the Climax and the Beech-Nut Scrap house. That was as much as anything, because I wanted him to remember me. I wanted him to remember me.

"X-Q. 65. You have heard a few instances of that kind of questions and discussions, have you?

"A. No discussion. It was just a casual remark: 'This is not made by the gum house.' I have heard that once or twice; I do not know where or when."

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Defendant's witness, PHILIP L. BURGESON, of Chicago, salesman for the Lorillard Company (R., Vol. II, pages 1649-1650):

"Q. 23. Now, have you ever heard of any questions or comments or remarks from customers or any other person or persons to the effect or which would lead you to believe that they thought the Beech-Nut cigarettes or the Beech-Nut Scrap tobacco were made by the same people that make the Beech-Nut gum or Beech-Nut peanut butter or food products?

"A. Well, I have perhaps as high as two or three times. A dealer would say 'Do you also make the Beech-Nut gum?' Of course, it would not be our big dealer that would say that; it would be some of the peanut stands, as we would say, that would say that. Two or three times at the highest.

"Q. 24. What was your answer on those occasions?

"A. 'We only make smoking articles.' Always say Beech-Nut gum is a food product and we do not make food products. We make eighty-five of the Turkish brands that are on the market. We do not manufacture any food products whatsoever."

*Cross-Examination by Mr. Johnson.*

"X-Q. 25. You did, then, Mr. Burgeson, hear some questions and discussion as to whether the Beech-Nut cigarettes were made by the gum people?

"A. Yes, naturally I would, on account of being the same name, but not as much as we did expect."

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Defendant's witness, JOHN A. WEBER, manager and part owner of seven cigar stores in Chicago (R., Vol. III, page 1712):

(Pages 1714-1715):

"Q. 25. Mr. Weber, have you ever heard any remarks, inquiries or comments among your customers or others to the effect or which would lead you to believe they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes to be the product of the same company that manufactures Beech-Nut chewing gum?"

"A. There was one, about once or twice that question was asked, wanted to know whether it was made all by one company or not.

"Q. 26. About how many times do you think that was?"

"A. Once or twice, and I happened to be on watch at that time."

(Page 1715):

"Q. 28. What did you tell those people who asked you whether it was made by the same company?"

"A. Well, being acquainted with both companies, I just told them one was made by the packing company that makes bacons and hams, and the other was made by P. Lorillard Company, the tobacco com-

pany; there was no confliction between the two at all."

(Pages 1718-1719):

"X-Q. 65. And have you heard some discussion as to whether the Beech-Nut cigarettes are made by the same people that make the Beech-Nut chewing gum?

"A. Never. No, I can't say that I ever heard that.

"X-Q. 66. Did you ever hear any questions asked as to who makes the Beech-Nut cigarettes?

"A. Only once or twice, as I stated before.

"X-Q. 67. Can you describe those incidents that you have just mentioned? Remember what the people said at the time?

"A. All I can say is, one party says, 'Are they all made by the same people?' I says, 'No.'

"X-Q. 68. What did they mean, were they all made by the same people, what were they referring to?

"A. Well, Beech-Nut gum and Beech-Nut cigarettes.

"X-Q. 69. And how many times have you been asked questions like that?

"A. Twice to my knowledge that is all.

(Page 1719):

"X-Q. 75. You might have heard some more than that you do not remember, might you not?

"A. The reason of me remembering those two is because the names were all so much alike. That is the reason I remember that, you see, and made by different corporations. Otherwise, I am positive I never heard anything said about it."

---

Defendant's witness, J. W. COREY, of Chicago, owner of a tobacco, candy and variety store (R., Vol. III, pages 1778-1779):

"When the cigarettes first appeared I remember hearing four or five persons inquire whether the

Beech-Nut Cigarette and Beech-Nut Chewing Gum were made by the same company. I told these persons that this was not the case and that the Lorillard Co. made the cigarettes and the Beech-Nut Packing Company made the chewing gum. Although I cannot say definitely that four or five was the number of these remarks which I heard, I can state positively that it was not many more than that."

---

Defendant's witness, W. E. DOUGLAS, manager of a tobacco store in Knoxville, Tennessee (R., Vol. III, page 1869) :

"When the cigarette first appeared I remember that two or three people asked me whether the Beech-Nut Cigarettes and the Beech-Nut Chewing Gum were manufactured by the same company."

---

Defendant's witness, E. R. TURNER, manager of a drug store in Louisville, Kentucky, and in charge of the candy and tobacco department of the store (R., Vol. III, page 1900) :

"When the cigarette first appeared I heard perhaps four customers ask whether the Beech-Nut cigarettes and Beech-Nut Gum were made by the same company."

---

Defendant's witness W. B. ZULWOOD, manager of a drug store in Louisville, Kentucky, in which tobacco is sold (R., Vol. III, page 1918) :

"I remember that in all my experience I have heard about six people ask whether either the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes were made by the same company that manufactures the Beech-Nut Gum and Beech-Nut Mints."

Defendant's witness JOSEPH H. ROSSWOG, a retail tobacco dealer at Pittsburgh, Pennsylvania (R., Vol. III, page 1949) :

"I have never heard more than four or five remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be the products of the Beech-Nut Packing Company."

---

Defendant's witness J. F. REINACKER, a retail tobacco merchant at Wheeling, West Virginia (R., Vol. III, pages 1970-1971) :

"I have never heard more than three or four remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company."

---

Defendant's witness I. KAUFMAN, a druggist dealing in tobacco in his drug store at Hartford, Connecticut (R., Vol. III, page 2055) :

"When the Beech-Nut Cigarette first appeared on this market I remember that two or three persons asked me whether the Beech-Nut Cigarette was manufactured by the same company that manufactured the Beech-Nut Chewing Gum."

---

Defendant's witness SAM SUKLOFF, JR., a retail tobacconist at New Haven, Connecticut (R., Vol. III, page 2103) :

" . . . I do remember that when the cigarette was first put on the market a few of my customers did ask me whether there was any connection between the makers of the gum and the makers of the cigarettes."

Defendant's witness A. H. GOTCH, a retail tobacconist at Bridgeport, Connecticut (R., Vol. III, page 2135):

" . . . I heard possibly as many as three or four customers inquire whether the Beech-Nut cigarette was made by the same company that manufactured the Beech-Nut Gum."

**APPENDIX D, QUOTATIONS FROM TESTIMONY  
OF DEFENDANT'S WITNESSES SHOWING THAT  
THE NAME "LORILLARD" IS PRACTICALLY  
UNKNOWN AS AN IDENTIFICATION OF TO-  
BACCO PRODUCTS.**

[Page numbers of the brief where Appendix D is referred to are shown in the list of Appendices appearing on the blue page immediately preceding the Appendices section.]

JOHN A. WEBER, manager and part owner of seven cigar stores in Chicago, a witness for defendant, testified as follows (R., Vol. III, pages 1719-1720):

"X-Q. 76. When people have come into your stores, within your long experience in the tobacco business, do they usually ask for cigarettes or tobacco by the name of the brand?

"A. Oh, yes; yes."

"X-Q. 77. Would you say that cigarettes and tobacco sell by the brand?

"A. By the brand; yes."

"X-Q. 78. Did you ever have a purchaser come in and ask for Reynold's Camels?

"A. No.

"X-Q. 79. Or American Tobacco Company's Lucky Strikes?

"A. No. Never.

"X-Q. 80. Or Lorillard's Beech-Nut cigarettes?

"A. No.

"X-Q. 81. Do they always ask for the cigarettes or tobacco by the name of the brand?

"A. They do."

The following is from the testimony of WILLIAM H. GETZELMAN, general manager of the eleven Breitung cigar stores in the business center of Chicago. He was a witness for defendant (R., Vol. III, page 1688):

(Pages 1700-1701):

"X-Q. 101. In your experience in the tobacco business, Mr. Getzman, have you found that customers ask for cigarettes and tobaccos by the name of the brand? Do they ask for Camels and Lucky Strikes and Union Leader, Climax, the names of the brands, such as that?

"A. Yes. Yes they come in and say, Camel, Lucky Strike. That is generally the way they ask for them.

"X-Q. 102. Would you say they sell by brands?

"A. Well, I guess that is what you would say, they sell by brands. If a man wants a package of Camels, he won't say Reynolds' Camels; he would say Camels.

"X-Q. 103. That is what I mean. Did you ever, in your experience, extending through sixteen years, hear a man, a customer, ask for Reynolds' Camels?

"A. No.

"X-Q. 104. Or American Tobacco Company's Lucky Strikes?

"A. No.

"X-Q. 107. Did you ever in your experience hear a customer ask for Lorillard's Moguls?

"A. No.

"X-Q. 108. Or Lorillard's Murads?

"A. No."

---

NATHAN ADELMAN, of Chicago, retail tobacco dealer, one of defendant's witnesses, testified as follows (R., Vol. III, page 1731):

"X-Q. 95. In your experience in the tobacco business, Mr. Adelman, do customers usually ask for a cigar, cigarette or tobacco by the name of the brand?

"A. Absolutely; absolutely.

"X-Q. 96. Do many customers ask you for the name of the brand, together with the name of the maker, like Reynolds' Camel cigarettes?

"A. No.

"X-Q. 97. Did anybody ever ask you for cigarettes that way?

"A. No, no, they come in and ask for Beech-Nut Scrap tobacco, Beech-Nut cigarettes, and if they want Beech-Nut Cigarettes they say Beech-Nut cigarettes.

"X-Q. 98. They do not say Lorillard cigarettes?

"A. No, they say Beech-Nut cigarettes."

---

WILLIAM GOLDSTEIN, head salesman for P. Lorillard Co., at Chicago, was a witness for defendant. The following is an extract from his testimony (R., Vol. II, pages 1365-1366):

"X-Q. 127. As a matter of fact, Mr. Goldstein, isn't it the brand of the cigarette, Murad or Moguls or London Lifes, the people ask for?

"A. As a rule the ordinary consumer does, yes.

"X-Q. 128. Isn't it the brand that sells the particular cigarette?

"A. Sure, it is the trade-name that sells it, but the average consumer that calls for that trade-name knows it is a product of the Lorillard Tobacco Company."

---

BENJAMIN A. MOSHER, proprietor of a drug store in Milwaukee, Wisconsin, testified for defendant concerning the tobacco business conducted in connection with his drug store. The following is quoted from his testimony (R., Vol. II, pages 1532-1533):

"X-Q. 101. In selling cigarettes, Mr. Mosher, did you find or have you found that people ask for them using the name of the maker?

"A. Never.

"X-Q. 102. Have you had people ask you when

they were buying, for Lorillard's Beech-Nut cigarettes?

"A. No, sir.

"X.Q. 103. Or Lorillard's Murad cigarettes?

"A. No, sir.

"X.Q. 104. Or Lorillard's Mogul cigarettes?

"A. No, sir.

"X.Q. 105. Or the American Tobacco Company's Lucky Strikes?

"A. No, sir.

"X.Q. 106. Have you found that it is the brand of the cigarette that sells the cigarette?

"A. Yes.

"X.Q. 107. You have found that right through, haven't you, it is the brand the people know and not the maker?

"A. Yes.

"X.Q. 108. It is the brand the people ask for?

"A. Yes, sir.

"X.Q. 109. Do people ask just for Beech-Nuts or the Beech-Nut?

"A. Yes, a package of Beech-Nuts.

"X.Q. 110. And in a case like that, what do you do?

"A. Ask them whether they want gum or cigarettes."

---

Defendant's witness, JOHN GLASSPIEGEL, Milwaukee, Wisconsin (R., Vol. II, page 1560):

"X.Q. 98. How many years have you been handling tobacco and cigarettes?

"A. About eight.

"X.Q. 99. Do your customers ask for them by the brand? That is, do they ask for Camels or Beech-Nuts?

"A. They ask for the brand, for the name, whether it is Camels, Lucky Strike, Chesterfields, or Beech-Nuts, it doesn't make any difference what cigarette it is. A cigarette smoker as a rule asks for the name of the brand.

"X.Q. 100. And does the same thing apply to chewing tobaccos?

"A. Yes, sir.

"X-Q. 101. Did you ever have any customer ask you for Lorillard's Union Leader?"

"A. No, sir.

"X-Q. 102. Or Lorillard's Moguls?"

"A. No, sir.

"X-Q. 103. Or Lorillard's Murads?"

"A. No, sir.

"X-Q. 104. Or American Tobacco Company's Lucky Strikes?"

"A. No, sir.

"X-Q. 105. You never heard any customer ask for cigarettes or tobaccos by the name of the maker?"

"A. No, sir.

"X-Q. 106. Have you found then that tobacco and cigarettes sell by the brands?"

"A. I have found that tobaccos and cigarettes sold by the title."

---

Defendant's witness, J. S. WEINER, manager of the cigarettes department in the department store of Rothschild & Co., in Chicago (R., Vol. III, page 1674):

"X-Q. 31. Have you found in your experience in the tobacco trade that customers ask you for a brand of cigarettes or tobacco, or do they ask you for the cigarettes by the name of the maker?"

"A. They ask for the cigarettes by the name of the brand of the cigarettes.

"X-Q. 32. Cigarettes sell by the brand?"

"A. By the brand; by the name."

---

Defendant's witness, DAVID KOSSACK, tobacco and cigar dealer, in Chicago (R., Vol. III, page 1685):

"X-Q. 47. Have you found in all these years' experience in the tobacco trade that people ask for cigarettes or tobacco by the name of the brand?"

"A. Only.

"X-Q. 48. That is, they ask for Camel cigarettes?"

"A. Camels or Beech-Nut, or whatever cigarette brand, they ask for it by name."

"X-Q. 49. Did you ever hear a customer ask for Lorillard's Beech-Nut cigarettes?

"A. No, sir.

"X-Q. 50. Or for Reynolds' Camels?

"A. No, sir, they never asked me that.

"X-Q. 51. Or for the American Tobacco Company's Lucky Strikes?

"A. No, siree.

"X-Q. 52. You never heard anyone buying cigarettes or tobacco ask for it by the name of the maker, have you?

"A. No, sir."

---

Defendant's witness, JACOB SHANFIELD, retail dealer in tobacco, candies and novelties, Chicago. (R., Vol. III, p. 1739):

"X-Q. 61. Do you find through your experience of thirteen years that your customers ask for a cigarette or tobacco by the name of the brand?

"A. By the name of the brand; yes, sir.

"X-Q. 62. Do they ask for a brand made by the American Tobacco Company or—

"A. No, sir.

"X-Q. 63. Or naming the maker?

"A. No, sir. Sometimes they come and ask me and give me the P. A., or there was a tobacco by the name J. R. There was one tobacco, J. R. Reynolds, and that was on the package, big J. and big R. J. R.

"X-Q. 64. Was that generally asked for in any way except by the name of the brand?

"A. Brand.

"X-Q. 65. Would you say cigarettes and tobacco sell by the brand?

"A. By the brand.

"X-Q. 66. Have you a front display window facing the side walk on the front side of your store?

"A. Yes, sir.

"X-Q. 67. Whose brands are you displaying in one half of your front window at the present time?

"A. Mostly P. Lorillard Company.

"X-Q. 68. What name is on that painted sign hanging out over your door with the street number '742 West 43rd Street' on it?

"A. One side is Helmar and one side is London Life, I believe. Don't say what company."

---

The testimony shows that even among the retail dealers in tobacco called as witnesses by DEFENDANT, many did not know the names of the manufacturers of the leading tobacco brands which they sold over the counter and could not name the brands made by the Lorillard Company.

SAMUEL S. BROADBENT, of Worcester, Mass., sells tobacco products in his drug store. He was one of defendant's witnesses. The following is quoted from his testimony (R., Vol.II, pp. 1157-1159):

"X-Q. 20. Have you sold other Lorillard brands besides Beech-Nut?

"A. Of what? Cigarettes, cigars?

"X-Q. 21. Cigarettes?

"A. I don't remember. I don't know what other brands they make, really.

"X-Q. 22. The only brand you can identify positively as a Lorillard brand is the Beech-Nut.

"A. Yes.

"X-Q. 23. Do you know who makes the Camel cigarettes?

"A. No, I don't know as I do.

.....

"X-Q. 27. Do you sell 'Murad' cigarettes?

"A. Yes, I think we have them.

"X-Q. 28. Do you sell 'Mogul' cigarettes?

"A. Yes.

"X-Q. 29. Do you sell 'Helmar' cigarettes?

"A. Yes.

"X-Q. 30. Do you know who makes those cigarettes?

"A. I do not.

"X-Q. 31. And you cannot name any Lorillard brands at all of cigarettes?

"A. No. As I told you, that was the only thing

that fixed that in my mind, was reading the ad. through to see . . . ”

---

The following is from the deposition of PETER PETERS, of Lawrence, Mass., a retailer of tobacco and groceries, one of defendant's witnesses (R., Vol. II, p. 1138):

“Q. 7. Do you know who makes the Beech-Nut cigarettes?

“A. Yes.

“Q. 8. Who makes it?

“A. Leroyd or Alroyd, or Ralroid—I don't know how to spell the name.

“Q. 9. You don't know how to spell the name?

“A. I don't know how to spell the name, but it is right on the package, anyway.

“Q. 10. Do you know who makes the Beech-Nut gum?

“A. Sure.

“Q. 11. Who?

“A. Beech-Nut Packing Company; their name is all marked on the package.

(Pages 1140-1141):

“X-Q. 16. Who makes the Fatima cigarettes, do you know?

“A. I didn't look to see.

“X-Q. 17. Can you tell me out of your head who makes the Fatima cigarettes?

“A. Of course, I don't handle much of them.

“X-Q. 18. How about the Camels, do you know who makes them?

“A. The Camels?

“X-Q. 19. Yes.

“A. No,—the American Tobacco Company, I think.

“X-Q. 20. Who makes the Lucky Strike, do you know?

“A. Meyers, or Miles,—I don't know.

“X-Q. 21. And who makes the Moguls?

“A. I don't handle them.

“X-Q. 22. Did you ever handle the Murads?

"A. Yes, sir.

"X.Q. 23. Who makes those?

"A. I don't know; I didn't look on the packages.

"X.Q. 24. Who makes the Helmars?

"A. I couldn't remember who makes them, but of course when I look at the package I can tell.

"X.Q. 25. But in the ordinary course you would not look on the package unless somebody asked you?

"A. No."

---

Another of defendant's witnesses, ANDREW J. WRIGHT, of Worcester, Mass., who had for eleven years kept a grocery, tobacco and confectionery store, testified as follows (R., Vol. II, pp. 1167-1168):

"X.Q. 36. What are the leading Lorillard brands of cigarettes you sell?

"A. I would have to look at the packages to tell you who makes them.

"X.Q. 37. Can you name any other Lorillard brand of cigarettes except the Beech-Nut without looking at the packages?

"A. Very doubtful.

"X.Q. 38. Do you know the name of the makers of the Camel cigarettes?

"A. I couldn't say, without looking.

"X.Q. 39. Do you know who makes the Fatima cigarettes?

"A. Again, I wouldn't say without looking.

"X.Q. 40. Or Chesterfields?

"A. No.

"X.Q. 41. Or Deities?

"A. No, I don't handle them.

"X.Q. 42. Murads?

"A. The Greek,—I don't know what his name is; I don't know how you pronounce it.

"X.Q. 43. Or Moguls?

"A. Why—

"X.Q. 44. Some Greek makes the Moguls?

"Mr. Cavanagh: Anargyros.

"A. Yes, I guess that would be it. I was trying to make it begin with an S.

"Mr. Cavanagh: S. Anargyros.

"X-Q. 45. You have been selling Deities and Moguls?

"A. Deities I haven't handled for a long time.

"X-Q. 46. You still sell Moguls?

"A. Yes.

"X-Q. 47. You sell Helmars?

"A. Yes.

"X-Q. 48. Do you know who makes Helmars?

"A. Well, let's see. Isn't that by the same people that makes Moguls?

"X-Q. 49. Do you know? Whether you know or not?

"A. If I was going to say, I should say it was the same people that makes the Moguls. I wouldn't swear to it.

"X-Q. 50. So the only cigarettes of which you can name the manufacturer definitely is Beech-Nut?

"A. Why, let's see. No, I guess 'Sweet Caps' (Caporals) isn't that the American? Well, I wouldn't undertake to name them accurately.

"X-Q. 51. Can you name any other except Beech-Nut?

"A. Because I never pay any attention to these things. Most of these cigarettes have been manufactured by somebody and have been consolidated with other concerns; without paying any particular attention I know they have been, but who the originators are and who owns them, I wouldn't be sure."

---

CARL W. JACOBSON, one of defendant's witnesses, a retailer in Baltimore, Maryland, did not know that the Beech-Nut cigarette was made by the Lorillard Company until told so by defendant's counsel as shown by the following question and answer. (R., Vol. II, p. 1215):

"Q. 12. Do you know what company makes the Beech-Nut cigarettes?

"A. After I had a conversation with you I do, but I didn't know it before."

WILLIAM STEIDINGER, another of defendant's own witnesses, retailer of tobaccos, candies, groceries and notions, near an entrance to the Union Stock Yards in Chicago, did not know who made either Beech-Nut Serap Tobacco or Beech-Nut cigarettes until shown packages of each by defendant's counsel, although he handled both in his business. The following is from his testimony (R., Vol. III, pp. 1745-1746) :

"Q. 17. Do you handle Beech-Nut Serap tobacco ?

"A. Yes, sir.

"Q. 18. Do you know what company makes Beech-Nut Serap tobacco ?

"A. The Beech-Nut is—I don't even know ; I can't even tell you right now.

"Q. 19. Mr. Steidinger, do you know of the Lorillard Tobacco Company ?

"A. Sure, I know of the Lorillard.

"Q. 20. Do you handle any of the Lorillard Tobacco Company's products ?

"A. Sure, I got Lorillard.

"Q. 21. Could you name a few Lorillard products that you handle ?

"A. Well, sir, that is, the Climax is Lorillard's, isn't it ? Yes.

"Q. 22. Do you handle Beech-Nut cigarettes ?

"A. Beech-Nut cigarettes ? Yes, sir.

"Q. 23. Do you know what company makes Beech-Nut cigarettes ?

"A. I do not know ; no. I never paid any attention to that. You see, I buy from the jobbers ; I don't even know half of the companies, who makes them.

"Q. 24. I show you a package of Beech-Nut cigarettes, which is in this case as Plaintiff's Exhibit No. 1. Will you tell me whose name appears on the front of that package beneath the oval ?

"A. The P. Lorillard—The manufacturer ?

"Q. 25. Yes.

"A. Yes, P. Lorillard Company."

(Page 1747) :

"Q. 36. Did I understand you to say, when I asked you a moment ago whether you knew what company made Beech-Nut Scrap tobacco, that you did not know what company made it?

"A. I didn't know it unless I took time. I didn't pay any attention to the manufacturers at that time. I know it was not a gum manufacturer; it was a tobacco."

(Page 1753) :

"R-X Q. 93. You keep the Lorillard products, do you not?

"A. Yes, sir.

"R-X Q. 94. Any others besides Beech-Nut cigarettes and Beech-Nut Scrap tobacco?

"A. Well, let's see. That is one thing I have never paid much attention to, as I buy through jobbers. Climax tobacco and Havana Blossom. I don't know. I might have one or two more that I can't think of just now."

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The following is from the testimony of another of defendant's witnesses, ELEAZER LEBEWOHL, who keeps a tobacco store in Boston (R., Vol. II, p. 963) :

"X-Q. 34. When you speak about the reputation of the Lorillard Company, you mean its reputation in the tobacco trade?

"A. As being an old, reliable concern, and handling their merchandise for so many years, it impresses it on your mind.

"X-Q. 35. You naturally would deal with them on that account?

"A. Yes; and the merchandise being so extensively advertised, too, you know.

"X-Q. 36. What are the leading Lorillard brands of cigarettes which you have found to be the best sellers?

"A. You mean any cigarettes?

"X-Q. 37. Yes.

"A. Well, I will tell you; in buying tobacco, I

have in mind buying the tobacco, see, and my attention is so much occupied with all the other little details that I cannot tell you right off what they are,—you know, to be truthful to you."

---

PHILIP H. MORAN, proprietor of a tobacco store at West Lynn, Mass., a witness for defendant, thought every one knew that Lorillard made the Beech-Nut cigarettes, but he himself could not state accurately the names of the makers of other more prominent and widely sold cigarettes. The following is from his testimony (R., Vol. II, pp. 1109-1110):

"X-Q. 11. When you put in the Beech-Nut cigarettes, did the jobber, or the Lorillard agent come in and get you to put them in?

"A. I believe the agent came in first.

"X-12. He came in first and told you they were coming out with a new kind of cigarettes and that you better put them in?

"A. Yes, he asked me if I would put in some at the time.

"X-Q. 13. And, of course, you know who made them?

"A. Yes; I presume that everybody knew who made them.

"X-Q. 14. That is not based on anything anybody told you?

"A. No, that is just my supposition.

"X-Q. 15. You knew yourself?

"A. Yes, sir.

"X-Q. 16. When a man comes in to buy Camel cigarettes, or other brands of cigarettes, he comes in and puts his money down and takes the goods and walks out?

"A. Yes.

"X-Q. 17. And you don't have any discussion with him as to who makes Camel cigarettes?

"A. I don't know who makes them. I give him the brand he calls for. I am interested in making the sale, that is all I am interested in, the sale of them.

"X-Q. 18. Do you know who makes the Camel cigarettes?

"A. Yes.

"X-Q. 19. Who makes the Camels?

"A. The American Tobacco Company.

"X-Q. 20. Who makes the Fatimas?

"A. Why, I don't know; I think they are made by the same house, I wouldn't say; I don't know exactly.

"X-Q. 21. Do you know who makes the Lucky Strike?

"A. No, I was under the impression that the American Tobacco Company did.

"X-Q. 22. You are not sure who makes some of these most popular brands?

"A. Yes, I know some of them, but there are some I don't know.

**APPENDIX E, PLAINTIFF'S WITNESSES SHOWING LORILLARD NAME UNKNOWN TO MANY CLASSES OF PEOPLE.**

[Page numbers of the brief where Appendix E is referred to are shown in the list of Appendices appearing on the blue page immediately preceding the Appendices section.]

ALFRED W. GODFREY, trader in feeds and flour, on Chamber of Commerce, Boston—R., Vol. I, p. 53, X-Q. 24.

THOMAS F. MALONEY, trader on Chamber of Commerce, Boston—R., Vol. I, p. 69, X-Q. 13.

DORACE L. BOTTOMLY, grocer's clerk, Worcester, Mass.—R., Vol. I, p. 169, X-Q. 36.

JOHN H. LANG, wholesale grocer, Worcester, Mass.—R., Vol. I, p. 173, X-Qs. 17-19, p. 175, X-Q. 26.

CHAS. O. LARSON, grocer, Chicago, Ill.—R., Vol. I, p. 443, X-Q. 16.

EUGENE C. SULLIVAN, advertising salesman, Chicago—R., Vol. I, p. 459, X-Qs. 7, 10, 17.

DANIEL HUTTNER, butcher, Chicago—R., Vol. I, p. 487, X-Q. 19.

F. J. LATZEL, delicatessen proprietor, Oak Park, Ill.—R., Vol. I, p. 493, X-Qs. 17-19.

FRED KNOOP, grocer, Oak Park, Ill.—R., Vol. I, p. 497, X-Q. 9.

H. N. PETERSEN, grocer, Manitowoc, Wis.—R., Vol. I, p. 515, X-Q. 38.

MISS C. HELLER, bookkeeper and grocery clerk, Milwaukee, Wis.—R., Vol. I, p. 542, X-Q. 64.

CARL W. NEMETZ, grocer, Milwaukee, Wis.—R., Vol. I, p. 552, X-Qs. 22-24.

GEO. B. ROACH, grocer, Pembroke, Ky.—R., Vol. I, p. 669, X-Qs. 13-14.

BRYAN O. FOSTER, grocer's clerk, Pembroke, Ky.—R., Vol. I, p. 689, X-Qs. 39-40.

- CHAS. P. COOK, grocer, Paris, Ky.—R., Vol. I, p. 698, X-Qs. 30-32.
- WM. T. HILL, grocery and meat market, West Greenville, S. C.—R., Vol. I, p. 726, X-Qs. 11-13.
- JEFFERSON D. HAYDEN, grocer, Columbia, S. C.—R., Vol. I, p. 763, X-Qs. 88-92.
- WALTER PEABODY, grocer's clerk, Chicago, Ill.—R., Vol. IV, p. 2232, X-Q. 10.
- LUDWIG NURNBERG, grocer, Chicago, Ill.—R., Vol. IV, p. 2236, X-Q. 3.

**APPENDIX F, A FEW VETERAN TOBACCO DEALERS ARE THE ONLY WITNESSES WHO EVEN REMEMBER THAT THE WEISSINGER BEECHNUT TOBACCO BRAND EVER EXISTED—NOT ONE ULTIMATE CONSUMER REMEMBERS.**

The only witnesses who testified to any knowledge or remembrance of the old Weissinger Beechnut brand of tobacco, outside of Lorillard Company officials and a few men connected with its manufacture, are the following:

W. H. NICHOL, buyer for twenty-five years for a Pittsburgh wholesale and jobbing grocery house, Allen, Kirkpatrick & Co., stated that he had, at the request of a representative of the Lorillard Company, examined the records of the company for which he worked and that he found records of purchases of Weissinger Beechnut tobacco in 1901, 1902 and 1903, but no record of any purchases of that tobacco after 1903 (R., Vol. IV, pp. 2275-2276). Mr. Nichol had no personal recollection of the Weissinger Beechnut brand and said that "my knowledge of it would be simply the record as it is recorded in the books." This witness was not an ultimate consumer and had no recollection of the Weissinger Beechnut brand. He merely produced the old records of his employer, and these records show no purchase later than 1903.

CHARLES C. ST. CLAIR (R., Vol. IV, p. 2280), also a buyer for twenty-five years for the same concern that the above-mentioned witness, Nichol, works for, remembered buying Weissinger Beechnut tobacco for his employer, and when asked why his company ceased buying that brand he replied, "Well, my only opinion would be that they were unable to get it; it was not manufactured; no other reason that I know of." The company for which

Mr. St. Clair worked made its last purchase of Weissinger Beechnut tobacco in 1903 and Mr. St. Clair thought the reason no more was bought was that it could not be obtained because it was not manufactured.

WILLIAM M. GORMLY, a buyer employed for thirty years by S. Ewart & Co. of Pittsburgh, a company engaged in the wholesale grocery and tobacco business, produced a record showing purchases of Weissinger Beechnut tobacco in 1901 and 1902 (R., Vol. IV, pp. 2283-2284). He also produced two packages of the Weissinger Beechnut tobacco put out by Luhrman & Wilbern and bearing revenue stamps canceled in 1905 (R., Vol. IV, p. 2285). Mr. Gormly obtained these old packages from an "old drawer of samples" which "as a sample drawer has been out of use for ten years" (R., Vol. IV, p. 2287, X-Q. 51). Mr. Gormly referred to the samples in the drawer as "pretty well dried out now" (R., Vol. IV, p. 2287, X-Q. 54). When asked if he intended to destroy the drawer he said that "it should have been done long ago" (R., Vol. IV, p. 2288, X-Q. 59), but that it would be kept "until housecleaning" (X-Q. 60). In answer to cross-question 74 he said they had offered several times to give away the contents of the drawer but "no person would take it on account of its age" (p. 2290). The latest packages produced by Mr. Gormly were those taken from this drawer and bearing revenue stamps canceled in 1905. He stated as his idea of the reason his company ceased buying Weissinger Beechnut tobacco that possibly there was a lack of demand for it (p. 2288, X-Q. 64).

H. H. ARNOLD, for thirty years connected with S. Ewart & Company, the firm for which Mr. Gormly also worked, identified the book entries referred to by the latter as being in his, Arnold's, handwriting. Despite

this long period of employment by S. Ewart & Company he imparted no information regarding the Weissinger Beechnut tobacco and did not state that he even remembered that such a brand had ever existed (R., Vol. IV, p. 2291).

T. F. COYLE, a buyer connected with Arbuckles & Company, wholesale grocers, of Pittsburgh for "at least twenty-five years," says that he bought the Weissinger Beechnut tobacco for his employer during the years 1901 to 1908 as shown by the Arbuckles & Company weekly and fortnightly printed price lists which are bound in yearly volumes and preserved by the company. There was no record showing that Arbuckles & Company dealt in Weissinger Beechnut tobacco after the year 1908 (R., Vol. IV, pp. 2292-2293).

H. O. EVANS was employed for twenty-four years by Thomas C. Jenkins Company, wholesale grocers and jobbers, of Pittsburgh. Mr. Evans was at first a bookkeeper and later a buyer for his employer. He produced records of the Jenkins Company showing purchases of Weissinger Beechnut tobacco in the years 1901 to 1907, but no record showing any dealings in that tobacco later than 1907 (R., Vol. IV, pp. 2294-2297). He said that the business in this tobacco "was a very small factor in our business" and that "we bought it in 100 pound lots" which "is a very small item for tobacco," "accustomed as we are to buy in carload lots" (R., Vol. IV, p. 2298, X-Q. 89).

J. LEWIS ORRICK, secretary and treasurer of J. C. Orrick & Sons Co., of Cumberland, Maryland, wholesale grocers and jobbers, stated on June 1, 1920 (R., Vol. IV, pp. 2270-2273), that he had been connected with this company "in one capacity or another" for nearly twenty

years and that during the first years of his connection therewith this concern was selling "Beechnut" tobacco "purchased from Harry Weissinger Tobacco Co., Continental Tobacco Co. and Luhrman & Wilbern Tobacco Co." He produced from the records of his company nine paid invoices showing purchases by his company of "Beechnut" tobacco from those firms in 1902, 1903, and 1906-1908, respectively. He stated that a few months before (in 1920), at the instance of a P. Lorillard Co. investigator, he found a carton of the old Harry Weissinger Tobacco Co. "Beechnut" tobacco which he sold to the Lorillard investigator, it having been in the Orriek store "for many years."

ALBERT P. GANS, of Louisville, Kentucky, stated that he had been employed for thirty-three years by the C. C. Bickel Company, manufacturers of cigars and jobbers of tobacco (R., Vol. IV, p. 2339). He said that the Bickel Company had bought and sold one "little lot" consisting of one gross of Weissinger Beechnut tobacco in the year 1897 (p. 2340, Q. 9, and p. 2342, Q. 19). He did not know what happened to this brand of tobacco or whether it remained in the market or not (p. 2343, X-Qs. 25-26).

P. J. ROSSWOG, retail tobacco merchant of forty-five years' experience in Pittsburgh, Pa., stated (R., Vol. III, p. 1927) that for several years following 1900, but not after 1910, he sold a scrap tobacco put out by Harry Weissinger Tobacco Co. or its successor, which bore the name "Beechnut" and the picture of a squirrel. He could not remember exactly when he first began to handle it or when he made his last sale (R., Vol. III, p. 1928).

M. BORENSTEIN, in the retail tobacco business for fifteen years in Pittsburgh, Pa., testified (R., Vol. III, p. 1930) to the same effect as P. J. Rosswog, above.

**APPENDIX G, UNITED STATES TRADE-MARK STATUTES—EXCERPTS.**

**Act of Feb. 20, 1905, ch. 592; 33 Stat. L. 724 (as amended).**

“SEC. 5. That no mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade-mark on account of the nature of such mark unless such mark—

“(a) Consists of or comprises immoral scandalous matter.

“(b) Consists of or comprises the flag or coat of arms or other insignia of the United States or any simulation thereof, or of any State or municipality or of any foreign nation, or of any design or picture that has been or may hereafter be adopted by any fraternal society as its emblem, or of any name, distinguishing mark, character, emblem, colors, flag, or banner adopted by any institution, organization, club, or society which was incorporated in any State in the United States prior to the date of the adoption and use by the applicant: Provided, That said name, distinguishing mark, character, emblem, colors, flag or banner was adopted and publicly used by said institution, organization, club, or society prior to the date of adoption and use by the applicant: Provided, That trade-marks which are identical with a registered or known trade-mark owned and in use by another and appropriated to merchandise of the same descriptive properties, or which so nearly resemble a registered or known trade-mark owned and in use by another and appropriated to merchandise of the same descriptive properties as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers shall not be registered: Provided, That no mark which consists merely in the name of an individual, firm, corporation, or association not written, printed, impressed, or woven in some particular or distinctive manner, or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which

they are used, or of the character or quality of such goods, or merely a geographical name or term, shall be registered under the terms of this Act: Provided further, That no portrait of a living individual may be registered as a trade-mark except by the consent of such individual, evidenced by an instrument in writing: And provided further, That nothing herein shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the mark is derived, in commerce with foreign nations or among the several States or with Indian tribes which was in actual and exclusive use as a trade-mark of the applicant, or his predecessors from whom he derived title, for ten years next preceding February twentieth, nineteen hundred and five: Provided further, That nothing herein shall prevent the registration of a trade-mark otherwise registrable because of its being the name of the applicant or a portion thereof." [33 Stat. L. 725, as amended by 34 Stat. L. 1251, 36 Stat. L. 918, 37 Stat. L. 649.]

"And if any person or corporation shall have so registered a mark upon the ground of said use for ten years preceding February 20, 1905, as to certain articles or classes of articles to which said mark shall have been applied for said period, and shall have thereafter and subsequently extended his business so as to include other articles not manufactured by said applicant for ten years next preceding February 20, 1905, nothing herein shall prevent the registration of said trade-mark in the additional classes to which said new additional articles manufactured by said person or corporation shall apply, after said trade-mark has been used on said article in interstate or foreign commerce or with the Indian tribes for at least one year provided another person or corporation has not adopted and used previously to its adoption and use by the proposed registrant, and for more than one year such trade-mark or one so similar as to be likely to deceive in such additional class or classes." [41 Stat. L. 535.]

"SEC. 6. That on the filing of an application for registration of a trade-mark which complies with the requirements of this act, and the payment of the

fees herein provided for, the Commissioner of Patents shall cause an examination thereof to be made; and if on such examination it shall appear that the applicant is entitled to have his trade-mark registered under the provisions of this act, the Commissioner shall cause the mark to be published at least once in the Official Gazette of the Patent Office. Any person who believes he would be damaged by the registration of a mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication of the mark sought to be registered, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section two of this act. An opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing. If no notice of opposition is filed within said time, the Commissioner shall issue a certificate of registration therefor, as hereinafter provided for. If on examination an application is refused, the Commissioner shall notify the applicant, giving him his reasons therefor." [33 Stat. L. 726, as amended by 34 Stat. L. 1252.]

"SEC. 9. That if an applicant for registration of a trade-mark, or a party to an interference as to a trade-mark, or a party who has filed opposition to the registration of a trade-mark, or party to an application for the cancellation of the registration of a trade-mark, is dissatisfied with the decision of the Commissioner of Patents, he may appeal to the Court of Appeals of the District of Columbia, on complying with the conditions required in case of an appeal from the decision of the Commissioner by an applicant for patent, or a party to an interference as to an invention, and the same rules of practice and procedure shall govern in every stage of such proceedings, as far as the same may be applicable." [33 Stat. L. 727.]

"SEC. 13. That whenever any person shall deem himself injured by the registration of a trade-mark in the Patent Office he may at any time apply to the

Commissioner of Patents to cancel the registration thereof. The Commissioner shall refer such application to the examiner in charge of interferences, who is empowered to hear and determine this question and who shall give notice thereof to the registrant. If it appear after a hearing before the examiner that the registrant was not entitled to the use of the mark at the date of his application for registration thereof, or that the mark is not used by the registrant, or has been abandoned, and the examiner shall so decide, the Commissioner shall cancel the registration. Appeal may be taken to the Commissioner in person from the decision of examiner of interferences." [33 Stat. L. 728.]

"SEC. 16. That the registration of a trade-mark under the provisions of this Act shall be *prima facie* evidence of ownership. Any person who shall, without the consent of the owner thereof, reproduce, counterfeit, copy, or colorably imitate any such trade-mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy or colorable imitation in commerce among the several States, or with a foreign nation, or with the Indian tribes, shall be liable to an action for damages therefor at the suit of the owner thereof; and whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment therein for any sum above the amount found by the verdict as the actual damages, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs." [33 Stat. L. 728.]

"SEC. 17. That the circuit and territorial courts of the United States and the supreme court of the District of Columbia shall have original jurisdiction, and the circuit courts of appeal of the United States and the court of appeals of the District of

Columbia shall have appellate jurisdiction of all suits at law or in equity respecting trade-marks registered in accordance with the provisions of this Act, arising under the present Act, without regard to the amount in controversy." [33 Stat. L. 728.]

"SEC. 18. That writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this Act in the same manner as provided for patent cases by the act creating the circuit court of appeals." [33 Stat. L. 729.]

"SEC. 19. That the several courts vested with jurisdiction of cases arising under the present Act shall have power to grant injunctions, according to the course and principles of equity, to prevent the violation of any right of the owner of a trade-mark registered under this Act, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for wrongful use of a trade-mark the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction. The court shall have the same power to increase such damages, in its discretion, as is given by section sixteen of this Act for increasing damages found by verdict in actions of law; and in assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost which are claimed." [33 Stat. L. 729.]

"SEC. 23. That nothing in this Act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade-mark might have had if the provisions of this Act had not been passed." [33 Stat. L. 730.]

**Act of May 4, 1906, ch. 2081; 34 Stat. L. 168.**

"SEC. 2. That the Commissioner of Patents shall establish classes of merchandise for the purpose of trade-mark registration, and shall determine the particular descriptions of goods comprised in each class. On a single application for registration of a trade-mark the trade-mark may be registered at the option of the applicant for any or all goods upon which the mark has actually been used comprised in a single class of merchandise, provided the particular descriptions of goods be stated." [34 Stat. L. 169.]

**APPENDIX H, DECEPTIVE PRACTICES OF SALES-MEN SELLING BEECH-NUT TOBACCO AND CIGARETTES.**

[Page numbers of the brief where Appendix H is referred to are shown in the list of Appendices appearing on the blue page immediately preceding the Appendices section.]

That the inherent deceptive effect of the Lorillard Beech-Nut labels was frequently aggravated by the deceptive representations or conduct of many of the Lorillard or other tobacco salesmen cannot be doubted in view of the testimony of some of the plaintiff's witnesses.

CHARLES P. COOK, of Paris, Kentucky, is proprietor of a grocery store. His deposition appears at page 695 of Vol. I of the Record. He testified (Q. 17 *et seq.*) that four or five years previously a salesman had come into his store, stating that he was selling Beech-Nut tobacco; that he told the salesman that he did not know that the Beech-Nut Packing Company put up tobacco and that the salesman replied "that this was a new product, or one of their new products" (Q. 20). Mr. Cook stated that he was not certain that he bought Beech-Nut tobacco at that time, but that he would have been willing to handle it because he "had been handling other Beech-Nut stuff and thought the quality would be like all other Beech-Nut stuff." He added that he remembered this occurrence because Mr. Mattox, who sells the Beech-Nut products, was in the store at the time and he told Mr. Mattox that he did not know that the Beech-Nut Packing Company put out tobacco, and that Mr. Mattox replied that he did not know it either, that it was not on his list, but that he would find out about it. (Q. 22.)

GEORGE B. ROACH, a grocer of Pembroke, Ky., whose deposition appears at page 663 of Vol. I of the Record, testified that he dealt in the products of the Beech-Nut Packing Company; that he first learned of the Beech-Nut tobacco by seeing posters in the show windows, and that he then thought the tobacco was being put out by the Beech-Nut Packing Company; that he first saw a package of the Beech-Nut tobacco when shown it by a traveling salesman who came into his store saying that he represented Beech-Nut tobacco (Q. 19). This occurred about the first of August, 1921. In reply to questions 24 to 33, Mr. Roach stated that he did not remember that the salesman stated whom he represented, but said he was selling Beech-Nut tobacco and that he gained the impression that he represented the Beech-Nut Packing Company. He stated his reason for this impression as follows (Q. 26):

"Well, because he said in the conversation that I knew the Beech-Nut trade-mark and knew what it stood for—anything put out under the Beech-Nut trade-mark had to be the highest quality."

Mr. Roach stated that these remarks convinced him that the tobacco was put out by the Beech-Nut Packing Company, but he learned differently later from Mr. Hamilton, a salesman for the Beech-Nut Packing Company, and that at a still later date the Beech-Nut tobacco salesman came in again, and Mr. Roach gives the following account of his interview with him upon that occasion (Q. 32):

"Well, I told him that I understood that the Beech-Nut Packing Company was raising 'Cain' about them using their trade-mark, and he said that they had sold the trade-mark to the Beech-Nut Packing Company, and had reserved the right to use the trade-mark on tobacco—he said that they had sued them once on the trade-mark and lost it, and he didn't think that they could gain it this time."

Mr. Roach said that the Beech-Nut tobacco salesman said his name was Bacon (Q. 37).

WILLIAM T. HILL, proprietor of a grocery store in West Greenville, S. C., stated that a salesman came to his store, offering Beech-Nut tobacco for sale, about the first of November, 1921. He described the occurrence as follows (R., Vol. I, p. 724):

"Q. 18. What did you say to him?

"A. Well, I just have to commence sort of in my own way. You know we have men to come in here every day to sell something. As nigh as I recollect, I was by myself when he came in here. He asked me about the tobacco, and I had never heard tell of it. I told him I would not buy none now, but probably later on. I talked on and explained to him I didn't like buying new things. He went on then to ask me about how the Beech-Nut stuff sold, such as peanut butter and gum, and so on, and I told him it was a fine seller. 'Well,' he said, 'this tobacco will make you just such a seller as Beech-Nut.' I turned around to him and said, 'The Beech-Nut Company putting out tobacco?' He talked on and I don't know I got any direct answer. Don't think I did.

"Q. 19. What was the effect on you of what he did and said at that time?

"A. Well, I just put it up that they had put out tobacco.

"Q. 20. Who did you think put it out?

"A. The Beech-Nut Company, that's who I thought."

ROBERT L. BOWEN, a grocer of Spartanburg, S. C., whose deposition appears at page 742 of the Record, Vol. I, testified that he dealt in Beech-Nut products; said that when he first saw a package of Beech-Nut cigarettes (Q. 15 *et seq.*) he thought that they were the product of the Beech-Nut Packing Company. He describes the

occasion when he first learned of the Beech-Nut cigarettes as follows (R., Vol. I, p. 744, Qs. 17-22):

"Q. 17. When you first saw them, who did you think put them out?

"A. Beech-Nut Packing Company.

"Q. 18. What made you think so?

"A. Well, a man came in and held it up just like you, only not so far, not that far away, and I saw Beech-Nut on it, and the style of their label.

"Q. 19. What was the occasion when you first saw the Beech-Nut cigarettes?

"A. I was in the store and a gentleman came in—I was busy at the time, and he walked around. He kept waiting and finally I got a chance to speak to him. He said, 'I see you handle Beech-Nut peanut butter, and I want to sell you some Beech-Nut cigarettes.'

"Q. 20. Then, what occurred between you and him?

"A. He tried to sell me some, and I told him that I did not want to put in a new line, I was handling Chesterfields. He could not sell me, and he started to pack up and go away, and I said, 'It's funny that the Beech-Nut Packing Company is putting up cigarettes.' He said, 'Yes,' and went on out the door.

"Q. 21. Did he have any Beech-Nut cigarettes with him?

"A. Yes, sir.

"Q. 22. What effect did he have on you? What impression did he leave?

"A. He left the impression that the cigarettes were put up by the Beech-Nut Packing Company."

(Pages 748-749):

"X-Q. 26. You always bought your Beech-Nut goods from Mr. Jennings?

"A. Yes, sir.

"X-Q. 27. You would naturally think it strange that another party should come in to sell you Beech-Nut goods?

"A. Not necessarily.

"X-Q. 28. The party who came in to sell you the cigarettes did not say he was the Beech-Nut Packing Company's representative?

"A. He offered me Beech-Nut cigarettes.

"X-Q. 29. He did not say he was from the Beech-Nut Packing Company?

"A. I don't think he said he was from the Beech-Nut Packing Company. He said he saw I was handling Beech-Nut peanut butter, and he wanted to sell me some Beech-Nut cigarettes. He did not say he was from the Beech-Nut Packing Company—he made me think, though, that he was selling me cigarettes put up by them.

"X-Q. 30. You did not buy any, did you?

"A. I did not buy any from him, but he went off leaving me under that impression.

"X-Q. 31. What else did this man have with him besides the cigarettes?

"A. He did not show me anything else—when he went out of the store, I just made the remark that it was funny the Beech-Nut people were making cigarettes. He just said 'Yes.' He did not explain to me they were made by a different concern. He left the impression on my mind that the Beech-Nut Packing Company were making the cigarettes. He wanted to sell me Beech-Nut cigarettes and speaking about the Beech-Nut butter made me think they were made by them.

"X-Q. 32. He did not say the Beech-Nut Packing Company were making them?

"A. I don't remember what he said about it, but he left the impression on me that the Beech-Nut Packing Company were making the cigarettes."

JEFFERSON D. HAYDEN, proprietor of a grocery store in Columbia, S. C., stated (R., Vol. I, p. 756, Q. 23 *et seq.*) that he first saw a package of Beech-Nut scrap tobacco on Oct. 18, 1921, when a salesman came into his store and sold him some. He said that when he first saw this tobacco he thought it was made by the Beech-Nut people who put out the other Beech-Nut products, and that he was led to think so from the appearance of the package, adding "all looked the same, the label and the name Beech-Nut."

Mr. Hayden describes his experience with the Beech-Nut tobacco salesman as follows (*Ibid*, p. 757):

"Q. 27. Who was the man who came into your store, the salesman, that day, October 18, 1921?"

"A. E. L. Larson.

"Q. 28. What took place between you and Mr. Larson when he came into your store, October 18, 1921?

"A. He came in and introduced himself as Mr. Larson, selling Beech-Nut tobacco and from the appearance of the package it looked the same as the other Beech-Nut products, and he told me the Beech-Nut was a good seller, and I told him I had been selling the other products all along, and I thought it would be a good seller, and I would try a small quantity of it, and he said, 'Well, who would you like for it to come through,' and I told him it did not make any difference to me—Byrd Johnson would do. They were jobbers. I told him he could send me a small quantity. He said he would put in a dozen, and I told him all right. He had a little case with him full of tobacco, full of these packages, and he says, I can leave these packages with you. I told him all right. So I took an order for a dozen packages, and in the meantime I asked him how much it would amount to. He said, less than a dollar, so I took an order for a dozen and paid him. He said it would amount to 96 cents, with 2 per cent. discount. I said, 'Well, you can just mark the bill paid.' In the meantime he gave me this receipt here, marked 1 doz. packages, 10-cent size, which amount to 96 cents, 2 per cent. discount comes to 94 cents, paid to E. L. Larson. I gave him the cash over the counter for it.

"Q. 29. What was the effect on you of what Mr. Larson did and said at that time?

"A. He left me under the impression that it was the same house that sold the other Beech-Nut products, and that it was a good seller, that it would sell as the other products had been selling, and I understood the tobacco would be good, too.

"Q. 30. Who did you think was putting it out as a result of what he said?

"A. The same people who were putting out the other Beech-Nut products.

"Q. 31. How long did the conversation with Mr. Larson last?

"A. Very short. I suppose fifteen or twenty minutes. He was not in there very long, a very short time.

"Q. 32. You say he gave you this receipt for your order and your money?

"A. He did.

"Receipt signed E. L. Larson, identified by this witness, offered in evidence and marked Plaintiff's Exhibit No. 14. [Reproduced in Record Vol. VI, page 57.]

"Q. 33. Please look at this receipt and read the printed name at the top.

"A. 'P. Lorillard.' A part of it is scratched out.

"Q. 34. Torn out?

"A. Yes, sir. 'P. Lorillard' is all I see, looks like 'Incorporated' on the end.

"Q. 35. Torn out?

"A. Torn out (resuming the reading), '119 West 40th Street, New York.'

"Q. 36. What is the date on it?

"A. 'October 18, 1921.'

"Q. 37. Is there any jobber named?

"A. 'Byrd-Johnson.'

"Q. 38. What address?

"A. 'Columbia, S. C.'

"Q. 39. Any shipping instructions?

"A. Under name, 'Cash and Carry Groceries, shipping point 827 Main, quantity 1 doz., brand Beech-Nut, size, ten cents, price '96' cents, discount 2 cents, net, '94' cents. Marked 'Paid' by 'E. L. Larson.'

"Q. 40. Is that his signature?

"A. Yes, sir.

"Q. 41. Is there any other indication of the salesman on that order blank?

"A. 'Order taken by Salesman E. L. Larson,' stamped with rubber stamp, I suppose it is.

"Q. 42. Did you know what P. Lorillard Company was, whose name was at the top?

"A. I did not.

"Q. 43. Did that mean anything to you?

"A. No, sir.

"Q. 44. You did not notice it at the time?

"A. I did not.

"Q. 45. Was shipment made through the jobbers?

"A. No, sir.

"Q. 46. How was it delivered to you?

"A. Over the counter.

.....  
bacco—of Beech-Nut scrap, believing that you were dealing with the same people that were putting out Beech-Nut butter?

"A. I did.

"Q. 48. Did you sell any of it to your customers thinking it was put up by the same company that put up Beech-Nut butter?

"A. I did.

"Q. 49. Can you tell us what you said to some of them?

"A. I says, I have a new Beech-Nut product on the market, and it should be a good seller, that it was Beech-Nut and it ought to be all right. Beech-Nut products were good sellers and it should be a good product if it were as good as the others were."

(Page 762):

"X-Q. 85. When he came in here Larson did not tell you that the tobacco was made by the Beech-Nut Packing Company, did he?

"A. He did not tell me who made it.

"X-Q. 86. But he gave you a receipt of P. Lorillard Company?

"A. That is the receipt he gave me.

"X-Q. 87. That receipt has no connection whatever with the Beech-Nut Packing Company?

"A. It has not, so far as the name on it.

"X-Q. 88. As an ordinary careful man, familiar with business, as you are, when that receipt was given to you, if you looked at it you would have seen P. Lorillard, and know it was a P. Lorillard receipt, would you not?

"A. If I had observed it carefully.

"X-Q. 89. If you had looked at it?

"A. I did not look at it. If I had I would not have known whether it was the manufacturer or the jobber.

"X-Q. 90. But you would have known that it was a receipt of P. Lorillard Company?

"A. I would have known that it was headed P. Lorillard Company, but I would not know him from anybody else. He did not explain whether he was the manufacturer or jobber when I bought this."

(Page 766):

"R-D. Q. 119. To go back to your conversation at the time Mr. Larson went into your store—what was the impression made on you as a result of his conversation and his conduct at the time he was in your store?

"A. He left me under the impression that he was putting out a Beech-Nut product made by the Beech-Nut people, and, as I say, these Beech-Nut products were selling fine, and I was under the impression the tobacco would go the same way, and I told him I would try a small quantity of it. I would not keep much on hand, therefore, I took a dozen packages. I was not able to carry any larger stock as you notice. I carry a very small stock of any kind of goods.

"R-D. Q. 120. And whose product did you think this tobacco was at the time that you made that first purchase from Mr. Larson.

"A. I thought it was the Beech-Nut Packing Company's product. I thought it was put out by the Beech-Nut people."

MRS. AMELIA PETERSEN, of Manitowoc, Wis., wife of E. F. Petersen, one of two brothers who keep a grocery store at Manitowoc, testified (R., Vol. I, p. 502) that she first heard of Beech-Nut cigarettes (Q. 14) when a man came into the store trying to sell them. She was asked what this man said, and replied:

"Well, he said they were branching, that the Beech-Nut Packing Company were branching off into tobacco and cigarettes, that is what he told us." (Q. 16.)

She stated that the salesman made this statement to her brother in her presence and that they talked with

the salesman about peanut butter and he said they were branching off into tobacco and cigarettes (Qs. 17 to 20).

H. N. PETERSEN testified (R., Vol. I, p. 510) that he is one of the Petersen brothers who own the grocery store at Manitowoc, Wisconsin; that he first heard of Beech-Nut cigarettes when a salesman came into the store trying to sell them (Qs. 5 and 6); that his brother's wife was present upon this occasion (Q. 13). He was asked to state the conversation that took place when the salesman came in trying to sell the cigarettes, and testified as follows (p. 511, Q. 9):

"A. Well, then I says to him when he showed them cigarettes, I says, 'Well, if those cigarettes are as good as the Beech-Nut peanut butter, it is a good line, but,' I said, 'we have never had them before.' And I said to him, then: 'Well, that is a kind of peculiar line to go into, from the peanut butter into cigarettes,' and he said then, 'Well,' he says, 'they are branching out,' so I never paid no attention to the tobacco, really, whose that was, and never thought any more of it at the time."

Upon cross-examination, Mr. Petersen testified as follows (p. 514):

"X-Q. 35. Now, I want you to think this over very carefully. Did this man, when he came in, say that he represented the Beech-Nut Packing Company?

"A. He meant it this way, that I said to him, 'Well, if it is the same people—'

"Mr. Cavanagh: Would you just answer the question?

"Mr. Hinton: Let him answer. He is entitled to finish his answer.

"A. (Continuing) I asked him, 'If it is the same people that turn out the cigarettes as the peanut butter, it is a good article, no question about it,' and he said: 'Yes.' I said: 'But that is a funny thing to branch out in that line from peanut butter,' and he said: 'Well, they are branching out.' That is all he said.

"Mr. Cavanagh: X-Q. 36. Then he didn't say these cigarettes were made by the Beech-Nut Packing Company, did he?

"A. No, he didn't say that that I understood, but I thought when I mentioned the peanut butter that would be sufficient.

"X-Q. 37. As a matter of fact, he didn't say those cigarettes were made by the Beech-Nut Packing Company?

"A. No, he didn't say that, that I heard.

"X-Q. 38. Do you know of the P. Lorillard Company?

"A. No, sir."

Defendant introduced the testimony of E. F. Petersen, brother of H. N. Petersen (R., Vol. II, p. 1580). E. F. Petersen testified that some months before the Beech-Nut cigarette was introduced into the city of Manitowoc he had purchased an order of Beech-Nut scrap tobacco from a salesman who stated he was from P. Lorillard Company, tobacco manufacturers, and that this salesman made no misrepresentations as to who was the manufacturer of that tobacco. Upon cross-examination Mr. E. F. Petersen stated that he did not recall ever having mentioned to his wife, Mrs. Amelia Petersen, or to his brother, H. N. Petersen, the first visit of this Beech-Nut scrap tobacco salesman or what he had said or done at that time.

Wm. C. Weigel, retail grocer of Milwaukee, Wisconsin, testified as follows regarding what occurred when the Beech-Nut scrap tobacco was first sold him (R., Vol. I, page 561):

"I don't know whether I asked him directly, or whether he told me, but I was given to understand that this was a label that was only permitted on the very best products and was leased by the different companies that put out this product." (Q. 8.)

"I naturally supposed that the Beech-Nut label

was owned by some man or some company and then leased out to the people that put it out in a very high class product." (Q. 13.)

Mr. Weigel testified that he had dealt in scrap tobacco about two years (Q. 6) and that he had not learned the true facts regarding the trade-mark until about two or three weeks before testifying (Q. 14).